

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. S-687-F and S-687-G**

**PETITION OF BULLIS SCHOOL, INC.**

OPINION OF THE BOARD

(Effective Date of Opinion: July 7, 2004)

Case Nos. S-687-F and S-687-G are applications for modification of an existing special exception for a private educational institution to permit: 1) an increase in academic enrollment from 604 to 900; 2) an increase in enrollment of summer programs from 600 to 900; 3) additional faculty and staff to accommodate the increased enrollments; 4) expansion and construction of various facilities to accommodate the increased enrollments; and 5) continuation of certain academic year special activities.

The subject property is Lots N317 and F244, located at 10601 Falls Road, Potomac, Maryland, in the RE-2 Zone.

Pursuant to the provisions of section 59-A-4.125 of the Zoning Ordinance, the Board of Appeals referred the case to the Hearing Examiner for Montgomery County to hold a public hearing and submit a written report and recommendation to the Board for final action. The Hearing Examiner convened a public hearing on May 14, 2004, the record in the case closed May 28, 2004, and on June 14, 2004, the Hearing Examiner issued a report and recommendation for approval of the modifications.

Decision of the Board:                      Modifications granted, subject  
to conditions enumerated below.

The Board of Appeals considered the Hearing Examiner's report and recommendation at its Worksession on June 23, 2004. After careful consideration, and review of the record in the case, the Board adopts the report and recommendation, and **grants** the modifications, subject to the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel to the extent

that such testimony and evidence are identified in the Hearing Examiner's report and recommendation and in the opinion of the Board.

2. All terms and conditions of the approved special exceptions shall remain in full force and effect, except as modified by the Board as a result of these Modification Petitions.
3. The Petitioner must obtain approval of a preliminary plan of subdivision from the Montgomery County Planning Board.
4. The student enrollment under Special Exception Modification Petition S-687-F is limited to 900, and at no time shall Petitioner admit a greater number of students than it is able to appropriately manage with the facilities, faculty and staff available at the time.
5. The student enrollment of the summer programs under Special Exception Modification Petition S-687-G is limited to 900, and at no time shall Petitioner admit a greater number of students to its summer programs than it is able to appropriately manage with the facilities, faculty and staff available at the time.
6. Vehicles arriving at the school are not permitted to be stacked (*i.e.*, queued) on off-site streets during morning drop-off and afternoon pick-up periods.
7. The Petitioner shall implement the comprehensive traffic management program described in the submitted Transportation Management Plan (Exhibit 30(c)).
8. The Petitioner shall address the final alignment of Falls Road as part of a preliminary plan of subdivision for the proposed expansion of enrollment to 900 students, and once the final alignment is approved, Petitioner will apply for an administrative modification to its special exception to show the alignment of Falls Road on its Master Plan for the Bullis campus.
9. The Petitioner shall agree, as part of a preliminary plan of subdivision for the proposed expansion of enrollment to 900 students, to add a sidewalk from the northbound bus stop on Falls Road onto the Bullis campus. Once the sidewalk is approved in the subdivision process, Petitioner will apply for an administrative modification to its special exception to show the precise location of the sidewalk on its Master Plan for the Bullis campus.
10. After completion of review of its preliminary plan of subdivision and, if required, review by the Sign Review Board, Petitioner will apply for an administrative modification to its special exception to show the precise location and dimensions of its new entrance sign on its Master Plan for the Bullis campus.

11. Petitioner shall obtain approval of a final forest conservation plan by M-NCPPC Environmental Planning Staff prior to issuance of sediment and erosion control permit. The Plan shall specify forest protection measures and proposed afforestation areas. A Category I Forest Conservation easement or comparable long-term protection measure shall be placed on remaining forest and the stream valley buffers.
12. Petitioner shall obtain approval of a finalized storm water management concept plan by the Montgomery County Department of Permitting Services (DPS) prior to preliminary plan approval for this site.

On a motion by Allison Ishihara Fultz, seconded by Donna L. Barron, with Angelo M. Caputo and Donald H. Spence, Jr., Chairman in agreement and Louise L. Mayer necessarily absent, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 7<sup>th</sup> day of July, 2004.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.

**BEFORE THE MONTGOMERY COUNTY  
BOARD OF APPEALS**

**Office of Zoning and Administrative Hearings  
Stella B. Werner Council Office Building  
Rockville, Maryland 20850  
(240) 777-6660**

**IN THE MATTER OF:**  
**BULLIS SCHOOL, INC**  
Petitioner

Thomas Farquhar  
Todd McCreight  
Tim Lovett  
Robert Brown  
Andrew Balderson  
Stephen Peterson  
Marty Berger

For the Petitioner

Jody S. Kline, Esquire  
Soo Lee-Cho, Esquire

Attorneys for the Petitioner

\* \* \* \* \*

Martin Klauber, Esquire, People's Counsel

In Support of the Petitions,

\* \* \* \* \*

Before: Martin L. Grossman, Hearing Examiner

## HEARING EXAMINER'S REPORT AND RECOMMENDATION

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## I. STATEMENT OF THE CASE

On January 16, 2004, Petitioner, Bullis School, Inc., filed Petition S-687-F seeking modifications to existing special exceptions (CBA-1344, S-687 and S-687-A through E) which permit Petitioner to operate a private educational institution pursuant to Zoning Code Section 59-G-2.19. On February 27, 2004, Petitioner filed another modification Petition, S-687-G, seeking permission to expand its summer programs and other special activities.<sup>1</sup> In summary form, the modifications requested are to allow:

- a. an increase in the permitted academic enrollment from 604 to 900, (S-687-F);
- b. an increase in enrollment of the summer programs from 600 to 900 (S-687-G);
- c. additional faculty and staff to accommodate the 50% increase in enrollments;
- d. expansion and construction of various facilities to accommodate the increased enrollments; and
- e. continuation of certain academic year special activities

By resolution adopted February 4, 2004 and effective March 5, 2004, the Board of Appeals referred this matter to the Hearing Examiner for Montgomery County to conduct a public hearing and render a written report and recommendation to the Board (S-687-F, Exhibit 25).<sup>2</sup> The Hearing Examiner, on February 18, 2004, noticed a hearing in S-687-F for May 14, 2004, at 9:30 a.m. (S-687-F, Exhibit 21). On March 22, 2004, the Hearing Examiner noticed a hearing in S-687-G for the same date and time (S-687-G, Exhibit 13(b)).

Petitioner moved, by letters dated February 24, March 29, April 7, April 29 and May 5, 2004 to amend its Modification Petitions with additional materials (S-687-F-Exhibit 23 and

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<sup>1</sup> Because there are two separate files involved with this case and thus two sets of exhibits, the Hearing Examiner decided it would clarify the record and simplify review if exhibits pertaining to both files bore the same numbering scheme. Thus, beginning with Exhibit 26, the exhibits have the same numbers in both files. Exhibits from 1 through 25 will be identified with their case number (*e.g.*, S-687-F, Exhibit 25). The Exhibit list from the lead file, S-687-F, was selected as the reference point, and thus some S-687-G exhibit numbers prior to Exhibit 26 had to be left unused to achieve this consistency.

<sup>2</sup> A corrected version of that referral resolution was filed in Exhibit 56.

Exhibits 26, 29, 30 and 32), and those motions to amend the Modification Petitions were duly noticed and granted without objection.

On April 29, 2004, the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) filed its Report (Exhibit 34)<sup>3</sup>, which recommended approval of the Modification Petitions, with conditions. On May 6, 2004, the Planning Board unanimously recommended approval, with the same conditions suggested by Technical Staff.

The Hearing went forward as scheduled on May 14, 2004, and was completed on the same date, with the record held open until May 28, 2004. No opposition witnesses appeared at the Hearing, and Martin Klauber, the People's Counsel, strongly supported the Modification Petitions.

In response to questions raised by the Hearing Examiner at the Hearing, Petitioner filed an additional photometric study (Exhibits 55(a),(b-1) and (b-2)), which was approved by the Technical Staff in a supplemental report dated May 26, 2004 (Exhibit 58). Petitioner also filed two revised landscaping plans in response to points raised by Technical Staff and the People's Counsel. Exhibit 57(a-1) revised Plan SE-22, which is in the pre-hearing record as S-687-F, Exhibit 22(z), and exhibit 57(a-2) revised Plan SE-23, which is in the pre-hearing record as S-687-F, Exhibit 22(aa).<sup>4</sup> Technical Staff approved the revisions in a supplemental report (Exhibit 59) filed on May 28, 2004. The record closed on that date.

The appropriate scope of the hearing on a petition for modification of a special exception is spelled out in Zoning Code § 59-G-1.3(c)(4). That subsection provides:

- (4) The public hearing must be limited to consideration of the proposed modifications noted in the Board's notice of

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<sup>3</sup> The Technical Staff Report, Exhibit 34, is frequently quoted and paraphrased herein.

<sup>4</sup> The "SE" numbers are imprinted on the landscape (and other) plans, and the Technical Staff reports occasionally refer to those plans by the SE numbers, rather than the Exhibit numbers. For clarity, both numbering systems are referenced here.



public hearing and to (1) discussion of those aspects of the special exception use that are directly related to those proposals, and (2) as limited by paragraph (a) below, the underlying special exception, if the modification proposes an expansion of the total floor area of all structures or buildings by more than 25%, or 7,500 square feet, whichever is less.

(A) After the close of the record of the proceedings, the Board must make a determination on the issues presented. The Board may reaffirm, amend, add to, delete or modify the existing terms and/or conditions of the special exception. The Board may require the underlying special exception to be brought into compliance with the general landscape, streetscape, pedestrian circulation, noise, and screening requirements of 59-G-1.26, if (1) the proposed modification expands the total floor area of all structures or buildings by more than 25%, or 7,500 square feet, whichever is less, and (2) the expansion, when considered in combination with the underlying special exception, changes the nature or character of the special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected.

Decisions of the Board to amend or modify the terms or conditions of a special exception must be by the affirmative vote of at least 4 members as indicated by the adoption of a written resolution reflecting its decision, opinion and order.

Petitioner's plans include expansion of the total floor area from 227,064 square feet to 323,544 square feet, an addition of 96,480 square feet or more than 42% (Exhibit 59). Thus Petitioner's plans greatly exceed the statutory criteria of 7500 square feet or 25%. Moreover, the expansion, when considered in combination with the underlying special exception, may have substantial adverse effects on the surrounding neighborhood unless properly handled with a traffic management plan and appropriate screening. Thus, the scope of this inquiry does include a review of the "underlying special exception[s]," and is not limited by statute to "discussion of those aspects of the special exception use that are directly related to [the modification] proposals." This kind of inquiry generates a plethora of paperwork, but as will be seen below, Petitioner has demonstrated compliance with all the statutory requirements, and

its traffic management plan, screening and other proposals will successfully avoid any adverse effects on the community. Moreover, according to Technical Staff, all proposed modifications, except the changes to the stadium, will require a preliminary plan of subdivision and approval by the Planning Board.

## **II. FACTUAL BACKGROUND**

### **A. History of the Bullis School and the Applicable Special Exceptions**

The history of the Bullis School and the subject special exceptions is succinctly described in the Technical Staff report, Exhibit 34, and it is therefore substantially<sup>5</sup> quoted below:

1. Commander Bullis and his wife initially founded the Bullis School in 1931 as a boarding school located in the District of Columbia that functioned as a one-year preparatory school for the Naval Academy. Subsequently, the school relocated to Silver Spring and continued as a boarding school with expanded grades 9 through 12. During the 1960s, Commander Bullis acquired the Potomac site. The original special exception, Case Number CBA-1344, to permit operation of the School at its current campus, was granted on January 2, 1963.
2. On May 9, 1979, in Case Number S-687, the Petitioner was granted a modification to permit a revision to the site plan and an extension of time to implement the special exception. The time of implementation for the special exception was extended for five years.
3. On August 24, 1989, in Case Number S-687-A, the Board of Appeals granted a modification to the special exception to permit approval of a revised master site plan. The time for implementation of the special exception was extended for five years.
4. On June 8, 1994, in Case Number S-687-A, the Board of Appeals granted a modification to the special exception to permit construction of bathrooms and shower facilities and certain other modifications to the master plan.
5. On August 22, 1997, in Case Number S-687-C, the Board of Appeals granted a modification to the special exception to permit the temporary installation of two modular classrooms for a period not to exceed three years.
6. On October 19, 2000, in Case Number S-687-D, the Board of Appeals granted a modification to allow relocation and construction of the Arts Center; relocation of existing tennis courts to the eastern edge of the access road directly opposite the existing tennis courts and tennis bubble, the deletion of a proposed cross campus road, and the completion of the loop road extending from the western access point

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<sup>5</sup> The first numbered paragraph has been modified by combining it with the unnumbered paragraph appearing before it in the Technical Staff report.

of Falls Road to connect with the existing road south of the academic facilities and immediately north of the Arts Center.

7. On January 12, 2001, in Case Number S-687-D, the Board of Appeals denied a request for administrative modification seeking a three-year extension on the implementation of the master plan and a two-year extension on continued use of modular classrooms.
8. On June 26, 2002, in Case Number S-687-E, the Board of Appeals granted a modification to allow retention of seven accessory sheds.
9. On August 1, 2002, in Case Number S-687-E, the Board of Appeals resolved to allow the Bullis enrollment to “float” up to 604 students.
10. On November 20, 2002, in Case Number S-687-E, the Board of Appeals resolved that the time to implement the campus Master Plan was extended for one year from the effective date of the Resolution. (March 4, 2003)
11. On July 23, 2003, in Case Number S-687-E, the Board of Appeals granted a modification to allow an addition to the existing motor pool facility.
12. On January 16, 2004, and February 27, 2004 the Petitioner filed petitions for proposed modifications, Case Numbers S-687-F and S-687-G, the two cases now before the Board.

### **B. The Subject Property and Surrounding Neighborhood**

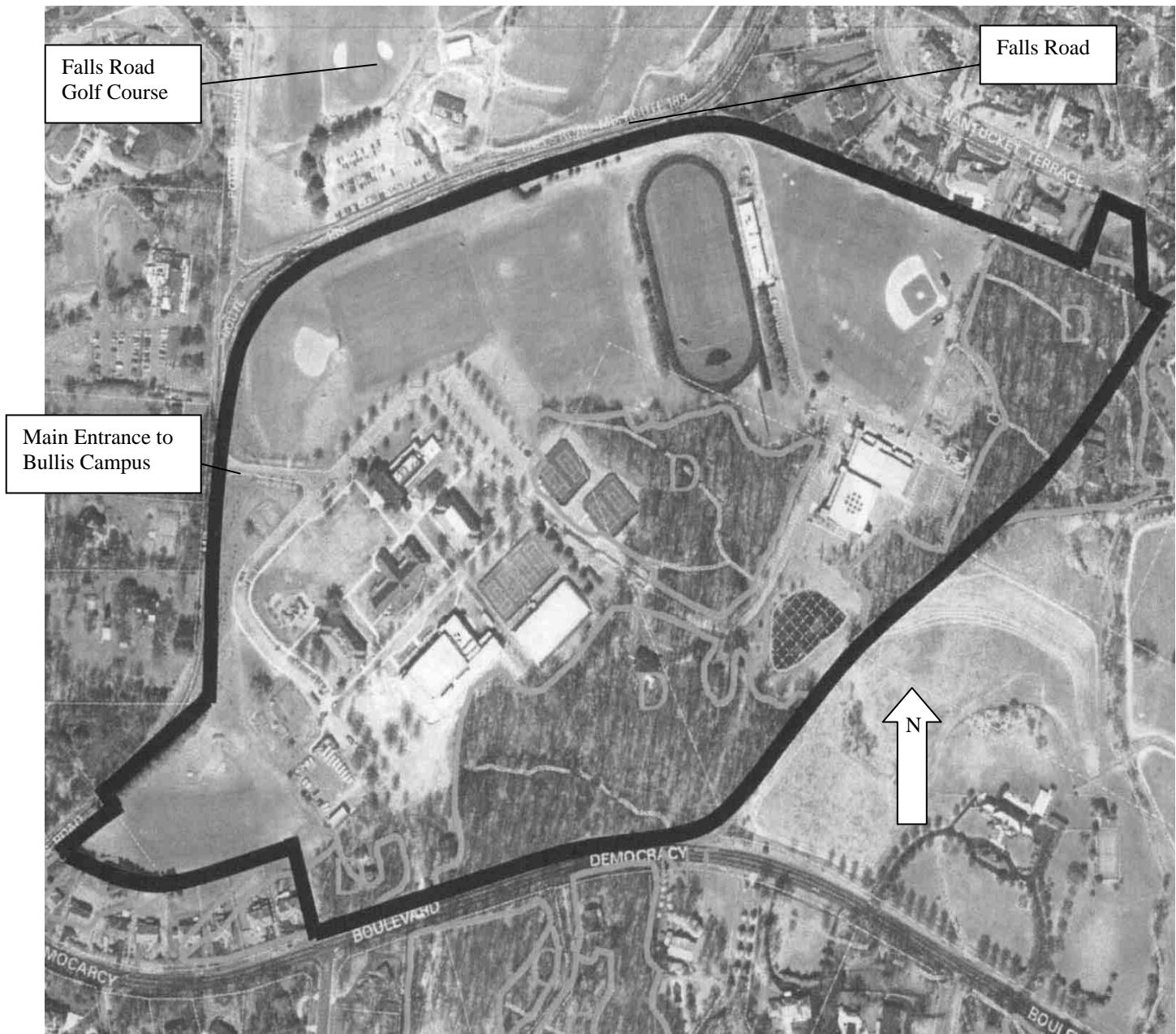
The Bullis School is an independent, co-educational college preparatory school with an approved enrollment of 604 students in grades 3 through 12 (Revised Statement of Operations, S-687-F, Exhibit 22(b)). It is located at 10601 Falls Road, Potomac, Maryland on 78.11 acres. The property is zoned RE-2<sup>6</sup> (Residential, One-family, 2 acre, Detached) and bears the Tax Account Nos. 10-01826310, 10-02256257, 10-00849326, 10-00849372 and 10-02468364. The property is described as Lot N-317, Parcel 244, Parcel 259, Outlot A, Blenheim, and Outlot A, Kentsdale Estates, in the Potomac Subregion.

The subject property is located between Falls Road and Democracy Boulevard, immediately to the south of the Falls Road Golf Course. Technical Staff describes the property as “irregular in shape and contain[ing] extensive frontage along Falls Road on the north and

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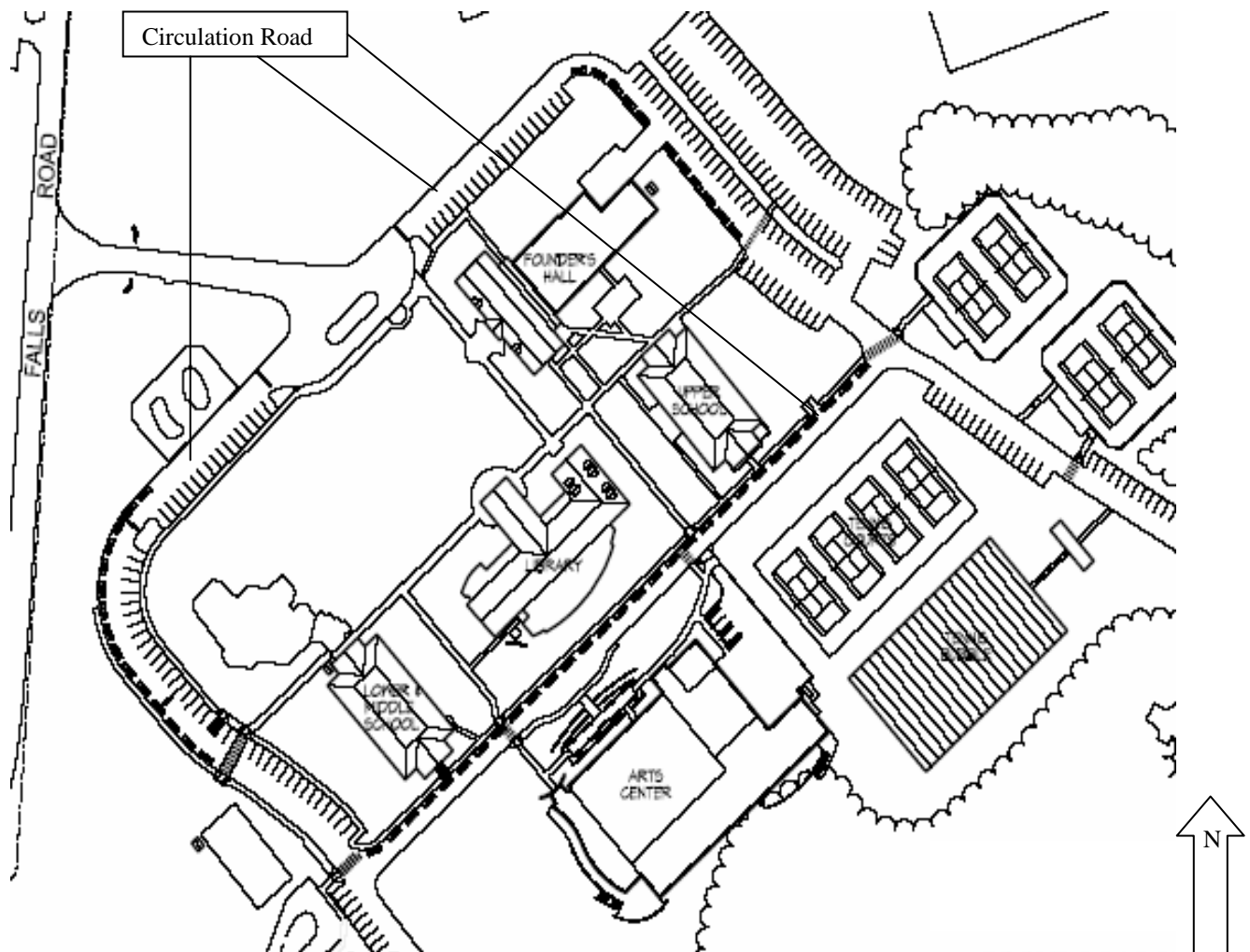
<sup>6</sup> A tiny portion of the Bullis property (approximately half an acre in Outlot A) is actually zoned RE-1. That small parcel is essentially outside the school campus and plays no part in the subject modification Petitions. Therefore, the RE-1 Zone is not included in either the Technical Staff analysis or the discussion contained in this report.

west sides and frontage along Democracy Boulevard on the south side.” The campus and its immediate environs can be seen in the portion of the aerial photo, which was attached to Technical Staff report as Map 3:



The front gate to the Bullis campus is located on Falls Road. It leads to a circulation road which surrounds the central portion of the campus. In that central portion, there are four main

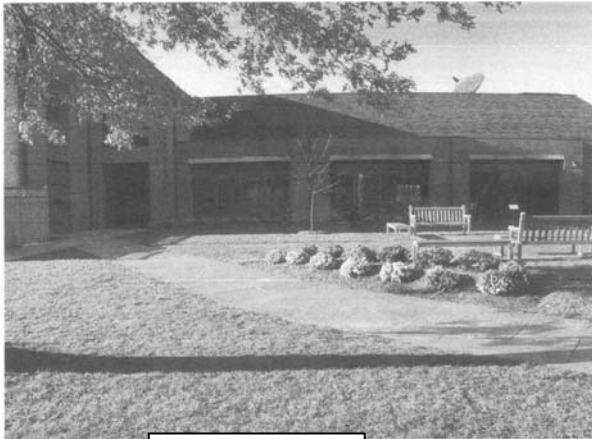
buildings, Founder's Hall, the Marriott Library, North Hall (housing the Upper School) and South Hall (currently housing the Lower and Middle Schools). There are tennis courts (including an indoor tennis bubble) outside the circulation road, to southeast of North Hall, and the Blair Arts Center, also outside the circulation road, is southeast of the Library. The locations of these structures can be seen on Exhibit 40, a diagram depicting the current traffic stacking plan.



Much of the northeastern portion of the campus (outside the circulation road) is devoted to athletic fields and facilities, including a large gymnasium. As can be seen in the aerial photo shown above, much of the eastern portion of the campus (19.3 acres) is forested, which

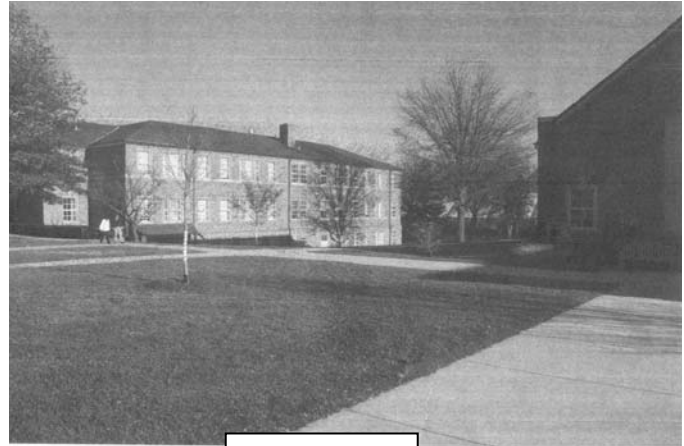
according to Technical Staff, was placed into a conservation easement in 2000. Technical Staff also notes that the campus gently slopes from north to south.

One can get some sense of the architecture on campus from viewing a few of the photos included by Petitioner in S-687-F, Exhibit 22(g).



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Founder's Hall



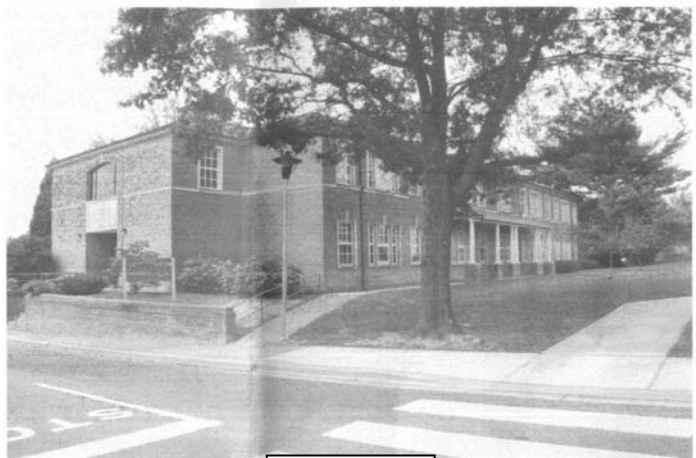
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Upper School



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Library



16

South Hall

Bullis has a Lower School for grades 3 through 5, a Middle School for grades 6 through 8 and an Upper School for grades 9 through 12. It operates on a trimester system, the Fall Trimester running from September through November; the Winter Trimester from December

through February; and the Spring Trimester from March through June. According to the Revised Statement of Operations, “On a typical day, School operations begin at 6:30 AM, when buses leave to pick up students, and extend through 6:30 PM, with athletics and arts rehearsals. Evening events, when they occur, generally conclude by 11:00 PM.”

Technical Staff describes the Bullis neighborhood as “predominantly low-density residential in character.” In addition to the previously mentioned golf course to the north, there are a tennis club, the Manor Care Nursing Home and the Normandie Farms Restaurant to the northwest, all across Falls Road. To the northeast are low-density single family homes in the Kentsdale Estates subdivision under the RE-1 and RE-2 Zones. To the east of the subject property is a single-family home on 28.01 acres in the RE-2 Zone, and to the south are low-density single-family homes, zoned RE-2 in the Camotop subdivision and R-200 in the Blenheim subdivision. The Bullis neighborhood is depicted in “Map 1” from the Technical Staff report:



Though not expressly labeled as the “defined neighborhood” by Technical Staff, the Hearing Examiner takes the Technical Staff’s description of the areas adjacent to the Bullis campus as describing the defined neighborhood, and the Hearing Examiner accepts that definition.

### **C. The Master Plan and Zoning History**

Technical Staff reports that the property has been classified under the RE-2 Zone since the adoption of the 1954 Regional District zoning, and this zoning has been confirmed by comprehensive zonings in 1958, 1980, 1987, 1990, and 2002, the last comprehensive zoning for this area of the County. See Map 4 in Exhibit 34. The property is included under the *Potomac Subregion Master Plan*, approved and adopted in 2002. The Master Plan continues to recommend the RE-2 zone, and the land use map indicates the site as a school/education facility.

The Land Use portion of the Master Plan does not specifically address the Bullis School site,<sup>7</sup> but as mentioned by Technical Staff, a private educational institution is permitted by special exception in the RE-2 Zone. Moreover, it is worthy of note that the Council, in adopting the final version of the Master Plan, eliminated language in the draft (p. 34) which would have required special exceptions for new or expanded private educational institutions to be “limited to those that serve the local area.” Instead, the Council substituted the following language:

There are a number of private educational institutions in the planning area and concerns have been raised about parking and traffic problems caused by queuing for drop-off and pick-up. The Council is considering amendments to the special exceptions provisions in the Zoning Ordinance to address these issues.

As will be seen below, Bullis has ample parking on its campus and has a Transportation Management Plan which will avoid any queuing on public roads for drop-off and pick-up. It is fair to say that nothing in the proposed Modification Petitions is inconsistent with the applicable Master Plan.

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<sup>7</sup> The Transportation Section of the Plan (p. 114) does retain a recommendation from the 1980 Master Plan for a realignment of Falls Road at three locations, one of them being at the Bullis School Property. This issue is addressed below in the section of this report on proposed structural modifications.



## **D. Proposed Modifications**

### **Modification Petition S-687-F:**

Modification Petition S-687-F concerns proposed changes to the operation and structure of the Bullis School. It does not cover the Bullis summer programs and other special activities.

#### **1. Enrollment, Faculty and Staff:**

The main thrust of Petitioner's proposal is to gradually expand enrollment in Bullis School by 50%, from 604 to 900. The school's rationale for doing so is connected with the way it views itself and its mission -- what Petitioner describes as the school's philosophy in its Revised Statement of Operations, a portion of which is quoted below:

Bullis is dedicated to providing a superlative college preparatory curriculum complemented by a balanced program of arts, athletics, and community service and to fostering a student body that includes a broad range of academic abilities. Bullis strongly believes that serving a broader academic range than many of its peer schools benefits students in a number of important respects, including the avoidance of an unproductively high-pressure school environment that often results from selecting only the brightest students from the Petitioner pool. Bullis evaluates Petitioners based on the entire range of talents and qualities – social, artistic and athletic, as well as academic – that each Petitioner would contribute to the Bullis community. By admitting a broader academic range of students, Bullis is also able to admit a greater proportion of sibling Petitioners than many peer schools and is thus a more “family-friendly” school – helping to strengthen the “community” element of its “caring, challenging, community” motto.

Although the majority of Bullis students live in Potomac and Bethesda, Bullis actively seeks a diverse student body through active admissions outreach, a large bus transportation program, and a rapidly growing and significant financial aid program. . . .

The Bullis philosophy bears on the subject Petitions because the school's expansion effort is driven, at least in part, by its desire to be able to accept all qualified Petitioners and thus to serve “a broader academic range than many of its peer schools.”<sup>8</sup> See testimony of Head of School, Thomas

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<sup>8</sup> Other stated goals of the proposed expansion are enabling an expanded curriculum, strengthening arts programs, achieving economies of scale, obtaining greater diversity in the student body and more competitive sports teams.

Farquhar, Tr. 27-30. In order to accommodate the planned increase in enrollment, Bullis will need to gradually increase its faculty from 98 to 148 (about 50%) and its staff from 55 to 75 (about 36%).

Tr. 42-43. It will also have to make significant changes and additions to the structures on campus.

## 2. Structural Changes to the Campus:

The extent of planned structural changes is demonstrated in a matrix compiled by Technical Staff (Exhibit 59), comparing the current floor areas and those that are anticipated after the planned construction:

	Existing	Proposed
Facility	Area (gsf)	Area (gsf)
Founder's Hall	23,478	25,838
New Lower School		15,150
North Hall/new Upper School	26,430	48,900
South Hall	17,900	17,900
Marriott Family Library	16,970	16,970
Blair Family Arts Center	48,276	48,276
Athletic Center	49,770	103,750
Indoor Tennis Facility	24,000	25,570
Stadium/Field House	8,550	9,500
Motor Pool/Maintenance	2,790	2,790
Faculty Duplex	2,500	2,500
Head Residence	4,400	4,400
Faculty House	2,000	2,000
Campus total:	227,064	323,544
Increase		42%

These changes and new construction will result in a total addition of 96,480 square feet, representing a 42% increase in floor area. The proposed renovations and new construction are set forth at some length in the Revised Statement of Operations, Exhibit 22(b). In order to simplify the presentation of these proposed structural changes, Petitioner prepared a “Master Plan” (not to be confused with the Zoning Master Plan), depicting the proposed changes on a diagram of the campus, keyed to a list of the intended projects. That Master Plan Key (Exhibit

50), which lists the items in proposed order of construction,<sup>9</sup> is reproduced below, because it is too small to read comfortably on the reduced size of the Master Plan diagram. It is followed by an overview of the entire Revised Master Plan diagram (Exhibit 39), reduced to fit on the page, and then, on succeeding pages, separate displays of the western half and the eastern half of the Bullis Master Plan, so that details will be more visible.

### KEY TO PROJECTS

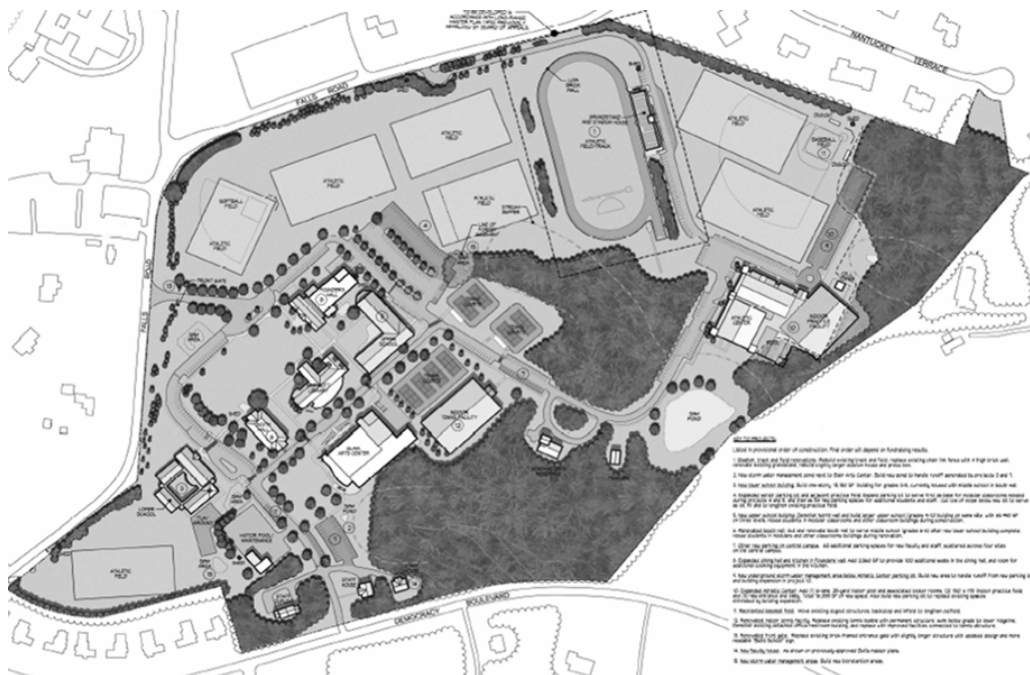
Listed in provisional order of construction. Final order will depend on fundraising results.

1. Stadium, track and field renovations. Rebuild existing track and field; replace existing chain link fence with 4' high brick wall; renovate existing grandstand; rebuild slightly larger stadium house and press box.
2. New storm water management pond next to Blair Arts Center. Build new pond to handle runoff generated by projects 3 and 7.
3. New lower school building. Build one-story, 15,150 SF building for grades 3-5, currently housed with middle school in South Hall.
4. Expanded senior parking lot and adjacent practice field. Expand parking lot to serve first as base for modular classrooms needed during projects 4 and 5, and then as 54 new parking spaces for additional students and staff. Cut toe of slope below new lot to serve as lot fill and to lengthen existing practice field.
5. New upper school building. Demolish North Hall and build larger upper school (grades 9-12) building on same site, with 48,990 SF on three levels. House students in modular classrooms and other classroom buildings during construction.
6. Renovated South Hall. Gut and renovate South Hall to serve middle school (grades 6-8) after new lower school building complete. House students in modulars and other classrooms buildings during renovation.
7. Other new parking on central campus. 63 additional parking spaces for new faculty and staff, scattered across four sites on the central campus.
8. Expanded dining hall and kitchen in Founders' Hall. Add 2,360 SF to provide 100 additional seats in the dining hall, and room for additional cooking equipment in the kitchen.

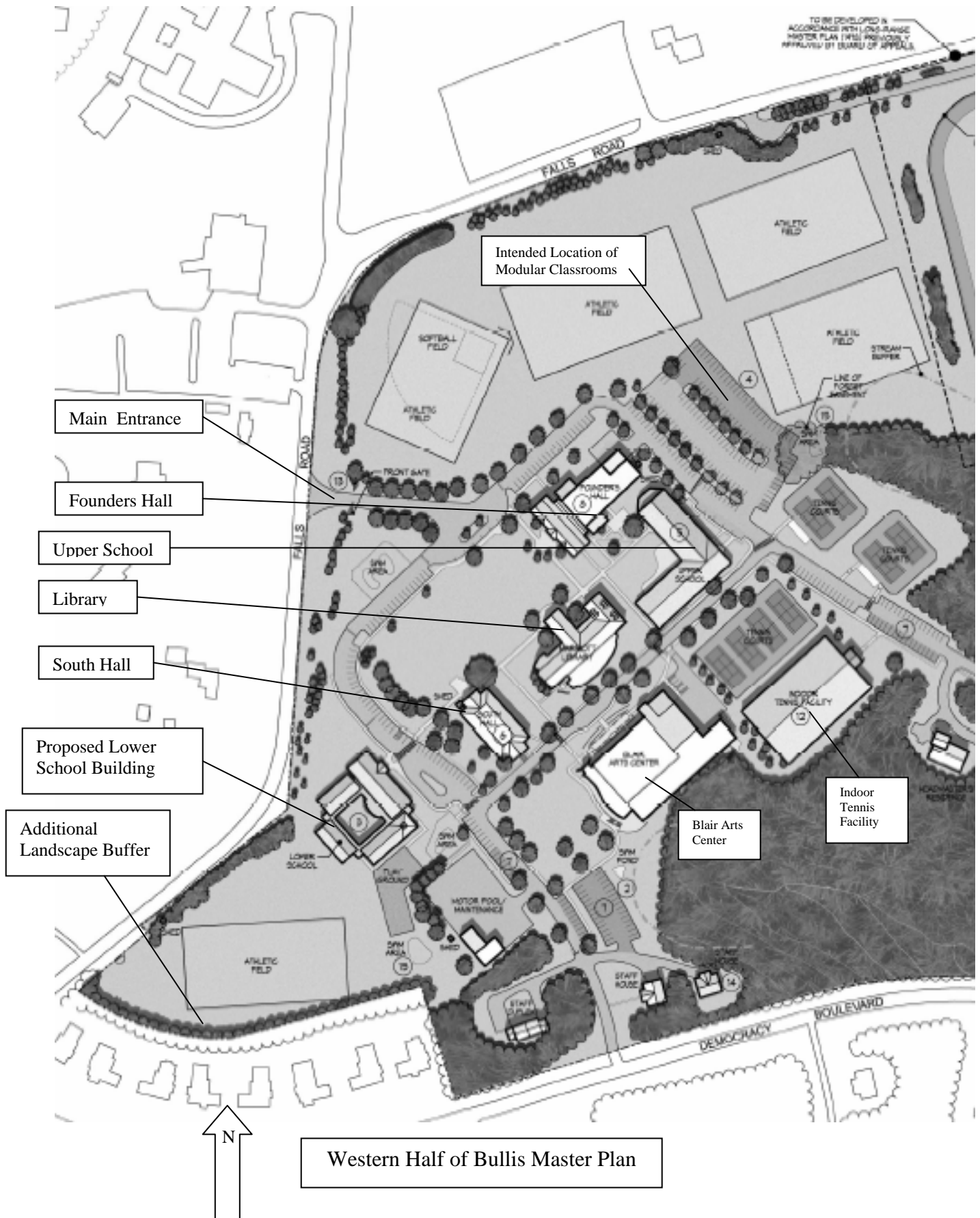
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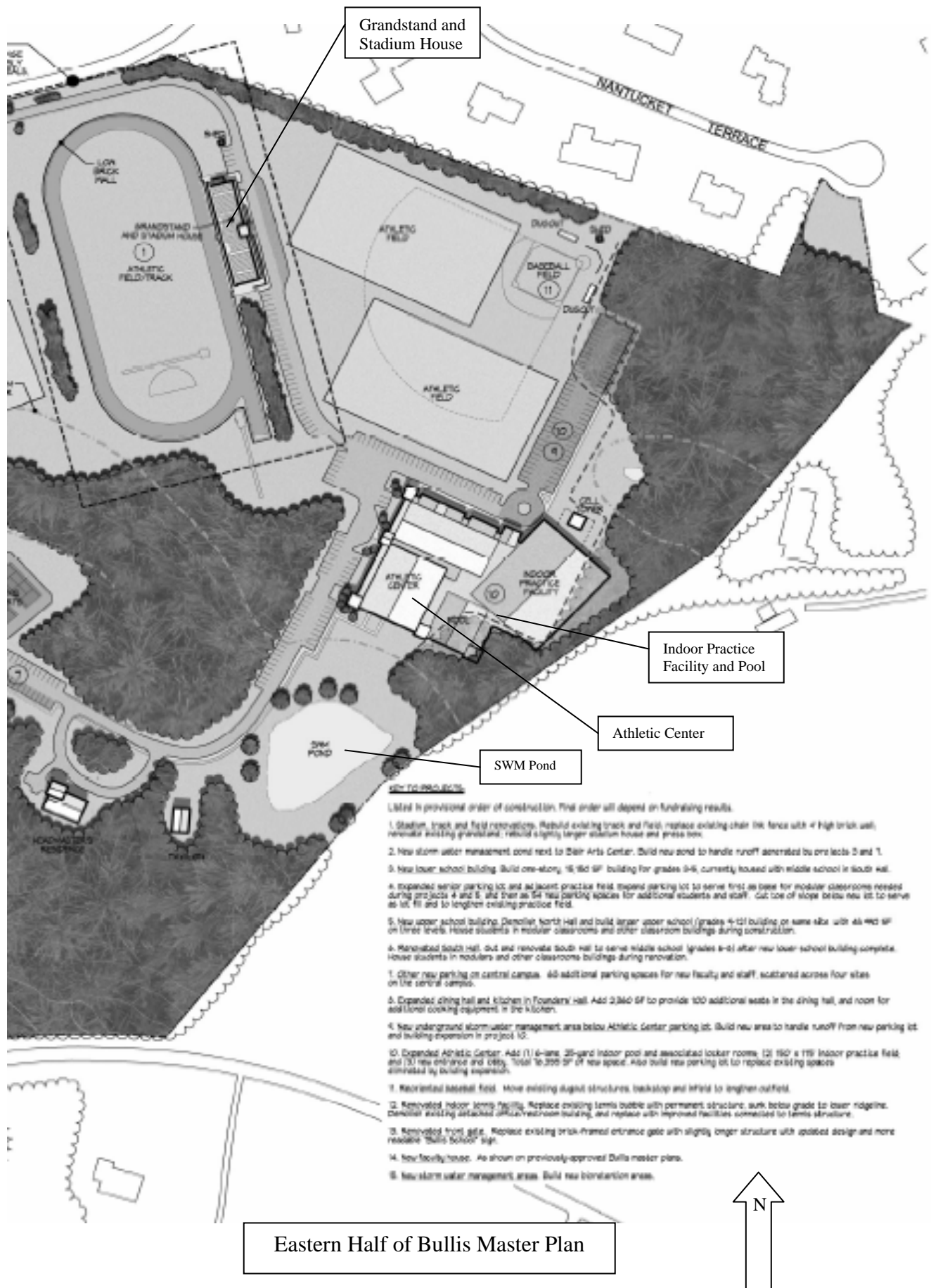
<sup>9</sup> The Hearing Examiner notes that the proposed order of construction in the Master Plan Key differs somewhat from the proposed order of construction in the Revised Statement of Operations. The latter plans the construction and renovation of academic buildings first. The Hearing Examiner finds that this difference is not important for the land use review entailed in this report.

9. New underground storm water management area below Athletic Center parking lot. Build new area to handle runoff from new parking lot and building expansion in project 10.
10. Expanded Athletic Center. Add (1) 6-lane, 25-yard indoor pool and associated locker rooms; (2) 150' x 175' indoor practice field; and (3) new entrance and lobby. Total 76,355 SF of new space. Also build new parking lot to replace existing spaces eliminated by building expansion.
11. Reoriented baseball field. Move existing dugout structures, backstop and infield to lengthen outfield.
12. Renovated indoor tennis facility. Replace existing tennis bubble with permanent structure, sunk below grade to lower ridgeline. Demolish existing detached office/restroom building, and replace with improved facilities connected to tennis structure.
13. Renovated front gate. Replace existing brick-framed entrance gate with slightly longer structure with updated design and more readable "Bullis School" sign.
14. New faculty house. As shown on previously-approved Bullis master plans.
15. New storm water management areas. Build new bioretention areas.



Overview of Bullis Master Plan





The Master Plan Key does not mention that Bullis also seeks to build a new sidewalk linking the central campus to the athletic center (See item #10 on the Revised Statement of Operations, Exhibit 22(b)). It will extend from the Blair Center, past the tennis facility, head residence and pond, to the Athletic Center. Technical Staff also notes that Bullis plans, at the same time, to extend an existing 18-inch storm water line under the sidewalk, between the current outfall near the tennis courts to the culvert at the base of the head residence driveway.

There are also some significant details about the increase in parking spaces not spelled out in the Master Plan Key, which are discussed in the Revised Statement of Operations (Exhibit 22(b)) and in the Technical Staff report (Exhibit 34). Bullis plans:

- (a) A new 30-space faculty/staff parking lot located adjacent to the southern corner of the Blair Center, across from the two faculty houses.
- (b) 10 new faculty/staff parking spaces across from the motor pool/maintenance facility entrance, with associated sidewalk improvements to enhance safety and access to the Blair Center, as well as the new Lower School.
- (c) 7 additional faculty/staff spaces adjacent to the motor pool/maintenance facility entrance.
- (d) 16 additional faculty/staff parking spaces alongside the road at the tennis center.
- (e) 54 net new parking spaces in the expanded student parking lot.

Although these figures (and those on the Master Plan Key) would appear to be adding 117 new spaces, the net increase is actually 101 parking spaces, taking into account the loss of 16 existing spaces through new building construction. Thus, the number of parking spaces will ultimately increase from 434 to 535. Revised Statement of Operations, Item #8 at p.16 and Tr. 101. Zoning Code §59-E-3.7 requires that private educational institutions provide “[o]ne parking space for each employee, including teachers and administrators, plus sufficient off-street parking space for the safe and convenient loading and unloading of students, plus additional spaces for all student parking.” As mentioned above, upon completion of the proposed Master Plan

improvements, Bullis anticipates a faculty of 148 and a staff of 75, for a total of 223 employees. Student drivers at complete enrollment are estimated by Technical Staff to total approximately 150, thereby requiring 373 spaces to accommodate both employee and student parking. The proposed 535 parking spaces would provide a residual of 162 spaces,<sup>10</sup> which Technical Staff determined would be sufficient for the safe and convenient loading and unloading of students. The proposed parking total of 535 is therefore more than sufficient under Zoning Code §59-E-3.7.

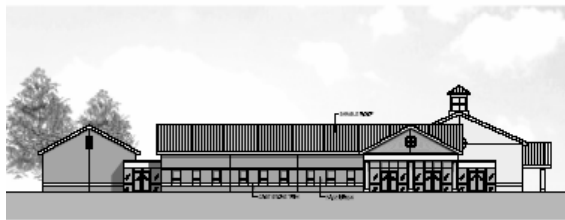
Finally, items numbered 5 and 6 on the Key to the Master Plan mention the use of “modular classrooms” to be used during construction of the new Upper and Middle Schools. Bullis proposes to house these modular classrooms for Upper and Middle School students in six double-wide trailers to be located on the planned new student parking lot northeast of Founders Hall (Exhibits 51(a) and (b)). There would also be one single width trailer for administrative staff. Bullis hopes to eliminate the need for the trailers in two years, but requests permission to retain them for up to three years in the event of fundraising or construction delays.

Petitioner has also submitted drawings depicting what these new constructions will look like. Samples of these drawings from Exhibits 42, 44, 45, 46, 47 and 48 are shown below.

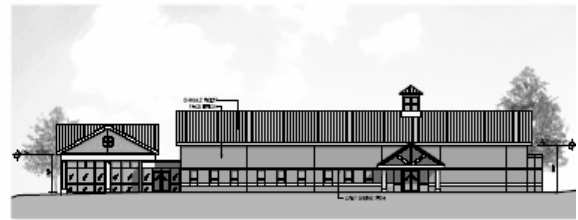


<sup>10</sup> Technical Staff corrected a typo in its May 28 Supplemental Report, which had indicated a residual of 61spaces.





SOUTH ELEVATION

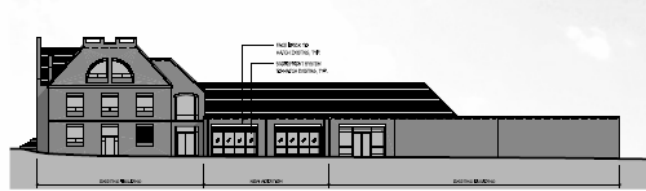


EAST ELEVATION

New Lower School

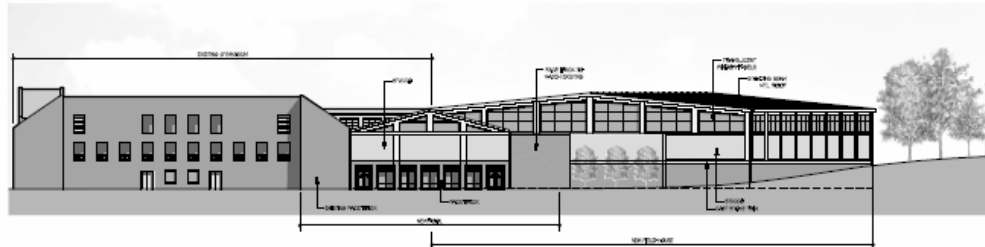


EAST ELEVATION



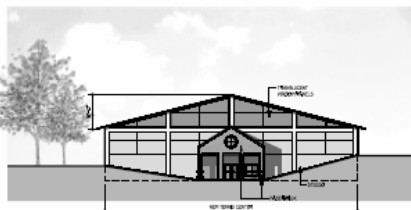
SOUTH ELEVATION

Dining Hall and Kitchen Expansion



WEST ELEVATION

Expanded Athletic Building

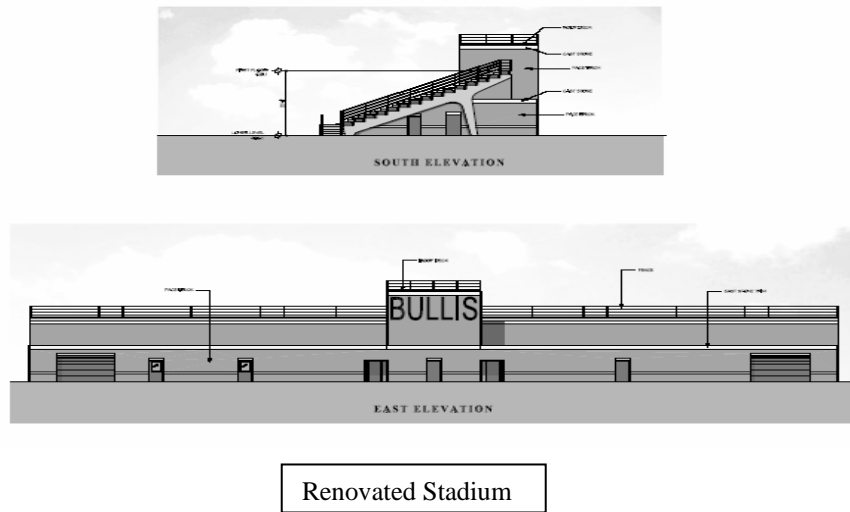


EAST ELEVATION



NORTH ELEVATION

New Tennis Facility



### 3. Landscaping and Lighting:

Petitioner has included seven Landscaping Plans with its filings in S-687-F, Exhibit 22, each covering different areas of the large Bullis Campus; however, one can get an overall sense of the landscaping from examining the Bullis Master Plan (Exhibit 39), shown above on pages 16 through 18 of this report. The Landscaping Plans include Exhibits 22(z)-a/k/a SE-22; 22(aa)-a/k/a SE-23; 22(bb)-a/k/a SE-24; 22(cc)-a/k/a SE-25; 22(dd)-a/k/a SE-26; 22(ee)-a/k/a SE-27 and 22(ff)-a/k/a SE-28.<sup>11</sup> Petitioner also filed two revised landscaping plans in response to Technical Staff’s recommendation for additional trees to shield the rear of the Democracy Boulevard residences, and to the observation of People’s Counsel at the Hearing that the additional trees should be reflected in the final landscaping plans. Tr. 133-134. Exhibit 57(a-1) revised Plan SE-22, which is in the pre-hearing record as S-687-F, Exhibit 22(z), and exhibit 57(a-2) revised Plan SE-23, which is in the pre-hearing record as S-687-F, Exhibit 22(aa).

<sup>11</sup> As mentioned in Part I of this Report, the “SE” numbers are imprinted on the landscape (and other) plans, and the Technical Staff reports occasionally refer to those plans by the SE numbers, rather than the Exhibit numbers. For clarity, both numbering systems are referenced here.

Technical Staff approved the revisions in a supplemental report (Exhibit 59) filed on May 28, 2004, and the Hearing Examiner agrees.

As stated by Technical Staff, the Bullis School property is extensively landscaped with mature plantings. Petitioner proposes to augment the landscaping with 158 trees and shrubs to screen parking lots, and to enhance new buildings. As described by Technical Staff, the proposal includes “a mix of 30 deciduous canopy trees at 3-3.5” caliper, 18 deciduous understory trees at 2-2.5” caliper, 13 evergreen trees at 8-10ft. and 97 evergreen shrubs at 6-8ft.” Supplemental screening by evergreen trees is depicted to the rear of the Athletic Center addition, in order to ameliorate the view from the adjacent neighbor on Stapleford Hall Court. Technical Staff concluded, and there is no evidence in the record to dispute their conclusion, that the species and sizes selected are all appropriate.

Petitioner’s S-687-F, Exhibit 22(gg)-a/k/a SE-29, is a Lighting Plan and Photometric Study for new or expanded parking lots.<sup>12</sup> The exhibit covers five different areas of the campus:

- Area 1. Between the proposed Lower School and the adjacent proposed parking expansion.
- Area 2. The proposed new parking lot north of the staff housing.
- Area 3. The expanded senior parking lot adjacent to the practice field.
- Area 4. The private drive and expanded parking area between the Athletic Center and the tennis facility.
- Area 5. The proposed parking expansion north of the Athletic Center.

Technical Staff concluded that the luminaries selected for the new parking areas “are unobtrusive and provide adequate parking area illumination while minimizing lateral light spillage.” Staff noted that it is the School’s intent to use the selected light fixture to replace existing streetlights on campus as they reach the end of their useful service lifetimes. Lighting fixtures identical to those used on the new parking lots will also be added to the currently dark

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<sup>12</sup> In the testimony, Petitioner’s expert witness, Tim Lovett, referred to Exhibit 18, the earlier version of the same Lighting Plan and Photometric study. Tr. 104-109.

stretch of campus road between the tennis facility and the Athletic Center, to improve vehicular and pedestrian safety at night.

At the Hearing Examiner's request, Petitioner submitted an additional photometric study of both the current lighting and the planned new lighting (Exhibits 55(b-1) and (b-2)). Petitioner's lighting expert,<sup>13</sup> Scott M. Watson, who did the new studies, opined in Exhibit 55(a) that "the horizontal illuminance along the Bullis property lines is presently in compliance [*i.e.*, under .1 footcandles], and the proposed street lights will also be in compliance." Technical Staff reviewed these findings in a supplemental report (Exhibit 58) and also found that "[t]he perimeter nighttime lighting survey indicates no readings approaching the threshold level of 0.1 foot candles." Technical Staff therefore determined "that the proposed light levels will have no adverse effect on the surrounding neighborhood." The Hearing Examiner accepts both Mr. Watson's expert opinion and that of the Technical Staff in concluding that neither the current Bullis lighting, nor the planned additional lighting will adversely affect the neighborhood.

#### 4. Traffic Management and Safety:

Petitioner's proposals to substantially expand its enrollment, faculty, staff and physical plant will clearly have some impact on traffic in the area. The first question which ordinarily must be answered at this stage is whether the traffic impact will be sizable enough to exceed Local Area Transportation Review (LATR) standards.<sup>14</sup> To answer this question, Petitioner provided a traffic study (S-687-F, Exhibit 19) and testimony by Stephen G. Peterson, an expert in

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<sup>13</sup> Exhibit 55(a) also includes Mr. Watson's Curriculum Vitae demonstrating his expertise as a lighting designer and consultant.

<sup>14</sup> There is no Policy Area Transportation Review (PATR) in this case because, as noted by Technical Staff, "development in Potomac is controlled by zoning and water and sewer constraints," not by PATR. *FY 04 AGP Transportation Staging Ceilings as of May 31, 2004*, note 3.

traffic planning and engineering. It should be noted, however, that because this project requires a preliminary plan of subdivision to be approved by the Planning Board, Zoning Code §59-G-1.21(a)(9)(i) does not require the Board of Appeals to complete an LATR and PATR analysis at this juncture. Instead, it requires that any grant of the special exception be conditioned upon subdivision approval. Such a condition is recommended by the Hearing Examiner in this case. Nevertheless, a brief summary of the LATR analysis is warranted because traffic conditions are a matter of general public welfare. Moreover, vehicular and pedestrian safety is an issue which remains before this Board under Zoning Code §59-G-1.21(a)(9)(ii).

Mr. Peterson testified that his traffic study “was prepared according to the Local Area Transportation Review Guidelines published by the Park and Planning Commission.” Tr. 136-137. He did traffic counts for the morning and evening peak periods at intersections specified by Park and Planning, and at three access points to the subject site. In addition, Mr. Peterson did traffic counts at the dismissal time from the school, to determine if there were any problems generated at any of the locations during the school peak hour, which is not the traffic peak hour. The school provided additional information as to car occupancy for the people who were dropping off children at the school in the morning. He determined a relative percentage for each route taken and used that information to project anticipated traffic for an enrollment of 900 students. Adding those projections to the ordinary “Background” traffic yields a projection of critical lane volume (CLV).<sup>15</sup> From that analysis, Mr. Peterson determined that “even with the expansion to the 900 students, all of the locations still fell with[in] critical lane volume; it was below the 1,525 critical lane movements that are permitted in the Potomac policy area.” Tr. 137.

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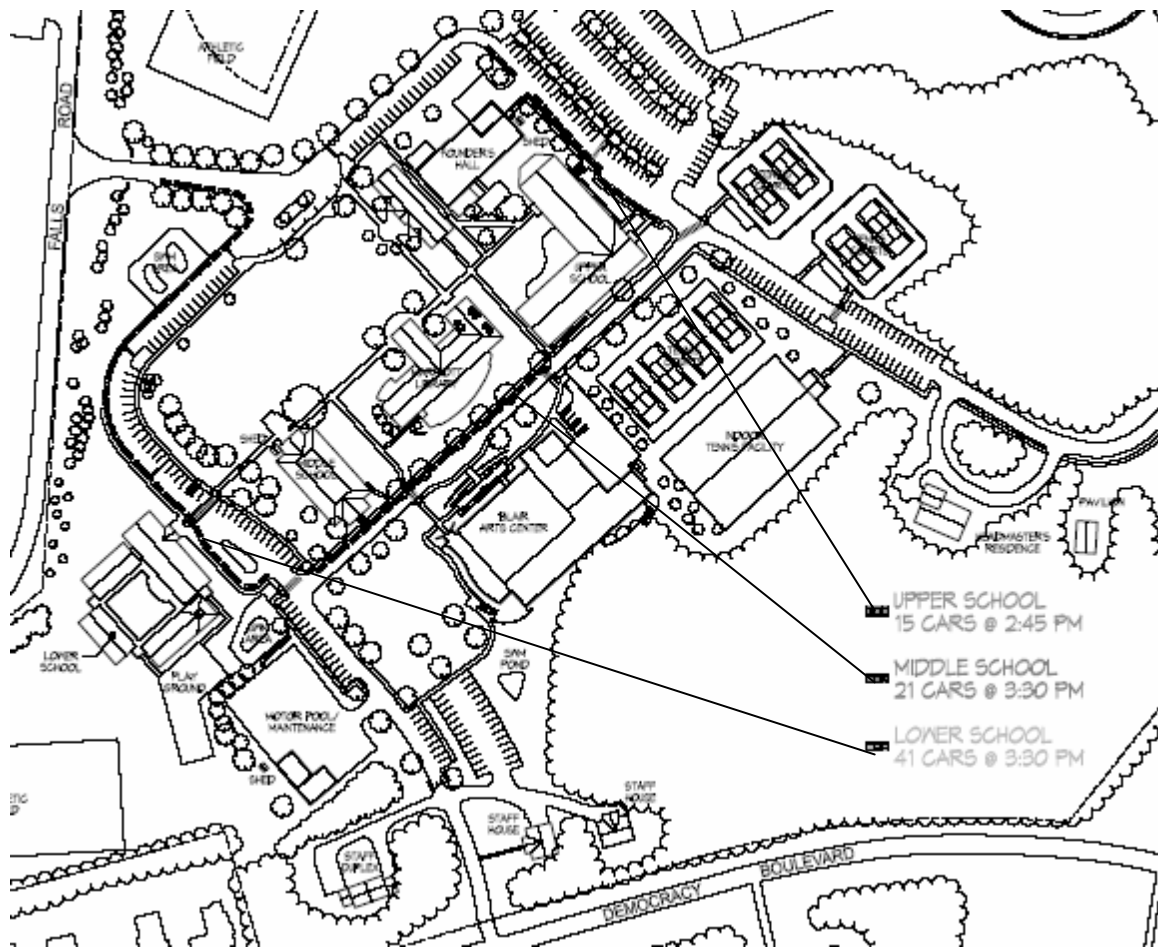
<sup>15</sup> Since there are no other approved projects waiting to be built in the immediate vicinity of Bullis, the “Background” traffic did not have to factor in any non-Bullis future development. Exhibit 19, p2.

Technical Staff reviewed this traffic study and concluded that “the three intersections analyzed are currently operating at acceptable CLVs (below 1,525) and this acceptable level will continue for . . . the total development condition (background traffic plus traffic from the site).” They also noted that the LATR study did not assume that “trip mitigation programs” contained in Bullis’s Transportation Management Plan (TMP) would reduce the number of vehicles per student. In other words, the LATR used a worst case scenario in projecting the impact on traffic from enrollment increases.

Nevertheless, the Transportation Management Plan (Exhibit 30(c)) is recognized by Technical Staff as a “reasonable [program] to handle the projected school traffic associated with the proposed expansion in a safe and efficient manner.” There are three major components to the TMP, minimization of vehicular traffic, management of vehicular traffic and dispersal of traffic away from the peak hour of usage of Falls Road and Democracy Boulevard.

“Minimization” includes efforts to encourage carpooling, the use of public and private bus service, and the restriction of vehicles that can be driven on campus. “Management” encompasses optimizing circulation and parking, use of traffic control measures, supervision of traffic by staff members and security officers and education of those coming to and/or on campus. “Dispersal” involves protocols that facilitate scheduling of non-classroom events or activities outside of peak traffic hours. The TMP also has provisions for managing special event traffic and summer school traffic.

The fact that Bullis can handle the anticipated increase in vehicular traffic on campus is demonstrated by the Queuing Diagram found in Exhibit 41 and depicted below.



The queuing diagram assumes that the TMP trip mitigation programs will reduce the number of vehicles per student by 40%, resulting in a maximum vehicle queue of 41 vehicles. Technical Staff notes, however, that even “if the queue length remains proportional to the proposed 50% increase in student enrollment, the maximum queue length would be 44 vehicles and still would not extend to the Falls Road right-of-way.” Under the TMP, Bullis staff will monitor queue lengths and, if necessary, direct vehicles to parking areas.

Mr. Peterson also testified with regard to the TMP. Tr. 137-138. He commented that the new Transportation Management Plan is an extension of a program that is already in place at the school, and it has evolved over time as, as enrollment has increased and as the conditions have

changed. In Mr. Peterson's words,

One of the beauties of the Bullis School campus is that they can, by virtue of having access to both Falls Road and Democracy Boulevard, they can create a flow-through system which eliminates, essentially eliminates any conflicts between entering and exiting traffic. The traffic enters from one side of the campus and exits through the other. And, under current conditions, they do in fact, in the afternoon, have a police officer that directs traffic, as indicated earlier by Mr. McCreight. And they will expand that to include the morning as well as the need arises and with increasing enrollment.

Significantly, in Mr. Peterson's opinion, the proposed changes to the Bullis School will have no adverse effect on the safety of vehicular or pedestrian traffic. Tr. 142. Technical Staff concurred in this conclusion, as does the Hearing Examiner.

In sum, traffic has been, and will be, well-managed by Petitioner under its TMP, thereby minimizing safety hazards and reducing the likelihood of adverse effects on the neighborhood.

#### 5. Other Changes Contemplated by S-687-F:

There are a couple of other items that should be considered in connection with the proposed expansion of Bullis. The Transportation Section of the *Potomac Subregion Master Plan* (p. 114) retains a recommendation from the 1980 Master Plan for a realignment of Falls Road at three locations, one of them being at the Bullis School Property. Todd McCreight, a Bullis administrative official, testified that there have been plans created in the past to straighten some of the curves on Falls Road as they pass the Bullis campus, but it was his understanding that nothing is currently planned. In any event, he stated that Bullis will be working with the State Highway Administration during the subdivision process to address the long-range plan for realignment of Falls Road as it passes the Bullis campus. Tr. 68-73.

Technical Staff states that the potential Master Plan re-alignment of Falls Road affects several properties between the intersections of Democracy Boulevard, South Glen Road and Eldwick Way, including the Bullis School. Representatives of the School have met with



Technical Staff and the State Highway Administration, and a study is ongoing to identify an alignment that addresses both the public interest and the concerns of adjacent property owners. Technical Staff noted that the whole matter will be considered during the subdivision review, and concluded that their review of the School's own master plan "indicates that no physical structures are proposed within the re-alignment of Falls Road as recommended in the Potomac Master Plan." Any changes to the Bullis Master Plan resulting from the Falls Road realignment will be reflected in a request by Petitioner for an administrative modification to its special exceptions.

Finally, Technical Staff recommended construction of a sidewalk from the existing northbound public bus stop on Falls Road to the campus gate, in order to enhance the safety of those bus riders who walk from the bus stop onto the campus, and vice versa. Petitioner has agreed to add a sidewalk from the northbound bus stop on Falls Road to the traffic circle in the core of the Bullis campus, but suggests that its precise design should await preliminary plan of subdivision so that it can be coordinated with redesign of the front entrance. Tr. 36-38. Once a final design is approved, Petitioner will apply for an administrative modification to its special exception to reflect the location of the new sidewalk. Tr. 38-39. The Hearing Examiner finds that the sidewalk is a desirable pedestrian safety feature and recommends a condition that Petitioner include one in its preliminary plan of subdivision. The condition would further require that Petitioner apply for an administrative modification to its special exception to show the final location of the sidewalk, once it is approved.

A similar condition is recommended concerning Petitioner's intention to replace its sign at the front entrance to the campus (Item #13 on the Bullis Master Plan Key). Because the sign's precise configuration will depend on potential changes to the entrance area at the subdivision stage and possibly upon review by the Sign Review Board, Petitioner will request an administrative

modification to its special exceptions to reflect the precise size and nature of the new sign. Tr. 98-100.

6. Phasing:

Petitioner has set forth, in its Revised Statement of Operations, a “Phasing Plan” showing its current concept of the order in which the major construction projects will be undertaken, subject to the availability of funding:

1. New Lower School Building
2. New parking behind Upper School, and temporary classrooms
3. Demolish and replace North Hall with a new Upper School building
4. Gut and renovate South Hall as a Middle School-only facility
5. Dining Hall expansion and completion of rest of proposed new parking
6. Athletic Center additions
7. Stadium improvements
8. Permanent tennis structure replacing current tennis bubble

Petitioner candidly admits that the completion of its construction program and the achievement of a 900 student enrollment will likely take at least seven years and “probably more than ten years.” Nevertheless, Petitioner believes in the value of long range planning and wants to make sure that both the County and its neighbors “understand the full scope of its long range plans.” Revised Statement of Operations, p. 21 (Exhibit 22(b)). The rate of growth will be determined mainly by two factors, the rate of increase of qualified applicants and the rate of fundraising. Tr. 146-148. However, because the facilities, faculty and staff are not yet in place to handle an increase in enrollment to the 900 student cap Petitioner is seeking, the Hearing Examiner has recommended a condition that would limit student enrollment at any given time to the number of students Petitioner can appropriately manage with the then available facilities, faculty and staff.

Petitioner is aware that under the present law, Zoning Code §59-A-4.53(b), a special exception is not valid after 24 months “if the use is not established or a building permit is not obtained and construction started within the period.” Extensions are available under Zoning Code §59-A-4.53(c) for only 12 months at a time. Therefore, Petitioner is supporting proposed Zoning Text Amendment (ZTA) 04-02 (Exhibit 38), which, if approved by the Council, would allow longer periods of special exception validity under certain circumstances.

Nevertheless, the Zoning law has not yet been changed, and we cannot assume that it will be. If the special exception modifications Petitioner seeks here are granted, Petitioner will be left to pursue whatever extensions of time it requires and can justify before the Board of Appeals.

**Modification Petition S-687-G:**

Modification Petition S-687-G concerns the operation of Bullis’s summer camp and other special activity programs, some of which occur during the academic year. Petitioner classifies the matters covered by S-687-G into four categories – Bullis Summer Institute, Sports Programs, “Bulldog” Day Camp and Academic Calendar Year Activities (Petitioner’s Statement of Operations, S-687-G, Exhibit 3(a)).

**1. Bullis Summer Institute:**

Bullis Summer Institute activities are all conducted indoors in various academic buildings on the campus. The Institute offers upper and middle school academic courses, such as algebra, geometry and computer sciences, for full credit, to existing students, and students from other schools. It also offers “Enrichment Courses” as preparatory or “refresher” courses to students who want to expand and enhance their skills algebra, geometry, PSAT/SAT preparation, study skills and vocabulary enrichment.

The upper school courses (grades 9 - 12) are taught in multiple sessions over the summer. Generally the courses will be taught in sessions scheduled from the middle of June to the middle of August. The middle school courses (grades 7 - 8) are also taught in two sessions—generally late June to mid-July and mid-July to early-August. Examples of courses from the past season include Math 6, Pre-algebra, Study skills and Write On!

Upper school students can achieve credit for these courses. At the middle school level, the courses offered are not “for credit”.

One of the functions of the Summer Institute is to offer enrichment programs of interest with a cultural or artistic orientation. Courses are offered to upper school, middle school and lower school students in the fields of performing arts and visual arts, computer education and writing. These subject areas attract students with high interest and Bullis expects that cultural/art and practical subject areas (e.g., computers) to grow in the future to accommodate the anticipated growing interest. According to Petitioner, the program will “undoubtedly” expand to include a greater variety of performing art specialties, more ceramic and photography classes, painting instruction and a greater variety of computer skills.

## 2. Sports Programs:

Bullis offers programs in softball, baseball, boys’ and girls’ soccer, boys’ and girls’ basketball, boys’ and girls’ lacrosse, and wrestling. Most of the sports programs are conducted outdoors on Bullis’ many athletic fields so that attendees are distributed across the campus. Indoor sports (i.e., basketball, wrestling) are conducted in Bullis’ Athletic Center, but campers conduct some training exercises outside as well.

In S-687-F, Bullis has requested permission to construct and operate a pool. If approved, and when constructed, Bullis wishes to expand its summer activities offerings to include

swimming and diving programs.

As with the Summer Institute programs, Bullis sports camps generally run from mid-June through mid-August. Most of the sports camps have a one-week duration, although programs of up to three weeks length may someday be instituted. According to Petitioner, it is common for a child to sign up and attend consecutive sessions of a single sport (to develop expertise in that sport), to sign up for a combination of camps, or to sign up for different camps in different sports from mid-June to mid-August.

### 3. Bulldog Day Camp:

Bullis also offers a sports and activities program for children from ages 5 to 11 (kindergarten through fifth grade classes), called “Bulldog Day Camp”. Petitioner characterizes the program as “a summer day camp in the truest sense, providing a varied menu of crafts, games, outdoor play, swimming (at the Rockville Municipal Pool), field trips and quiet activities.” This program runs in two or three week sessions from mid-June to mid-August and is an attractive introduction for youngsters to sports, culture and “team” activities.

### 4. Academic Calendar Year Activities:

Generally, Bullis has provided unaffiliated persons only limited use of its facilities, preferring “to focus the School’s assets primarily on academic-year school operations and summer programs.” Exceptions to this general rule are the Jack Schore Tennis Training Center program on the campus, previously authorized by opinion of the Board of Appeals, and performances of the Potomac Theatre Company, also sanctioned by the Board of Appeals in conjunction with its approval of Bullis’ Blair Family Arts Center. According to Bullis’ TMP (Exhibit 30(c)), the school has not found it necessary to take any extraordinary traffic management steps to avoid these events causing off-campus traffic problems.

According to Petitioner, Bullis has only a handful of other recurring, outside users as defined by Section 59-G-2.19(b) of the Zoning Ordinance. These programs include:

- a. Informal adult basketball groups (4 total), comprising 10 - 20 members each, who rent a gymnasium once or twice each week for two hours, on a weekday evening or weekend day. Many, if not most, of the members of these groups have other connections to the Bullis community.
- b. Jan Paper exercise group, comprising 20 - 40 participants, which rents a gymnasium each weekday morning for one hour of instructor-led aerobic and calisthenics exercise.
- c. Capital Beltway Basketball League, a local, non-profit league of boys' basketball teams that rent two gymnasiums two days of the winter each year.
- d. National Multiple Sclerosis Society, which is permitted to use all campus parking spaces one Saturday each year to provide off-site parking for participants in their annual walk-a-thon, held on a section of the C&O Canal. NMSS shuttles participants from the Bullis campus to the Canal with rented busses.
- e. Local non-school sports teams coached by Bullis parents or faculty, and comprised of at least 50% Bullis students, one or two of whom at any time are allowed to use a field or gymnasium for one or two practices per week.

Bullis charges these groups a nominal rent, or no rent at all, because, Petitioner states, its motivation in allowing outside use of its facilities is not economic, but rather a desire to support local educational and charitable causes, or to support educational outside activities in which Bullis students participate.

As it improves its facilities, Bullis would like to offer some new programs and allow limited outside uses contemplated by Section 59-G-2.19(b) of the Zoning Ordinance, as guided by the following principles:

- a. Bullis students, and achievement of the School's educational mission, have priority over any such adjunct activities.
- b. Arrival and departure of non-Bullis participants for such activities will be scheduled to occur outside of the School's peak periods of traffic as well as the peak periods of traffic on the surrounding roadway network.
- c. No activity will be allowed that would cause a condition to occur that would be different or that could be differentiated from the School's normal activities.
- d. Bullis will not allow use of campus facilities by outside groups, except for:
  - charitable organizations raising money for public causes;
  - other non-profit organizations with educational missions;
  - informal sports groups not exceeding twenty members on campus at any

- time;
- local non-school sports teams that include Bullis students; and
- existing groups described above.

#### 5. Summer Enrollment, Faculty, Staff and Counselors:

The proposed increase in summer program enrollment (*i.e.*, the first three categories included in S-687-G) is linked to the proposed increase in general student body enrollment. In other words, Petitioner is proposing that its summer program enrollment ceiling be increased to 900 campers,<sup>16</sup> if the Board of Appeals grants S-687-F and raises the academic year enrollment to 900 students. However, until Bullis' academic enrollment actually reaches the 900 level, Petitioner would like the flexibility to occasionally have more campers than students, albeit fewer than the 900 cap. Tr. 160-163. The Hearing Examiner sees little harm in permitting that flexibility, as long as Petitioner has the facilities, faculty and staff in place to handle whatever level of enrollment is admitted. A condition embodying that *caveat* has been recommended in Part V of this report.

Bullis employs up to 300 faculty, staff and junior counselors for its summer programs; however “[d]uring any given week, the total summer staff on campus typically does not exceed 100, since most summer staff work five or fewer weeks each summer, and camps are staggered throughout the summer.” Petitioner’s Statement of Operations, S-687-G, Exhibit 3(a).

#### 6. Summer Program Hours of Operation:

The summer programs are summarized, and their schedules for 2004 are set out in Exhibit 53. Petitioner describes the proposed hours of operation during the summer in its Statement of Operations, S-687-G, Exhibit 3(a), as follows: Almost all Bullis summer courses,

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<sup>16</sup> This term is used in the broad sense to include all participants in the summer institute, the summer sports program and the “bulldog” day camp.

camps and activities are operated from 8:00 AM to 4:00 PM, Mondays through Fridays. A few camps offer evening sessions during selected weeks, generally operating between 6:00 PM and 8:30 PM. Instructors, teachers and counselors, will arrive as early as 7:00 AM to prepare for the arrival of campers and to organize for that day's activities. The staff may remain on the Bullis grounds until 5:00 PM to clean up activity sites and store equipment and materials. The limited outside use activities generally occur during the time periods of 3:30 PM to 5:30 PM or 7:00 PM to 10:00 PM during weekdays, or between 8:00 AM and 10:00 PM on weekends.

#### 7. Traffic Impact of the Summer Programs:

Petitioner's traffic engineer, Stephen Peterson, testified that the transportation network is adequate to accommodate operation of the Bullis summer programs with 900 campers. In fact, he indicated that the impact on traffic of running the Bullis summer programs with 900 enrollees would actually be less than the impact on traffic of running the school during the academic year with 604 students. Tr. 169. He gave three reasons -- the staggered arrival for different summer programs, the later start time for all the programs and the lower level of summer traffic, in general. His analysis is also contained in a "Traffic Statement" which is in the record as Exhibit 29(a). In Mr. Peterson's opinion, the summer program traffic would not exceed the volume his LATR analysis yielded for the school-year traffic, and the increase in summer enrollment would not create a safety hazard for pedestrians or vehicles. Tr. 169-170.

In addition, the Bullis TMP (Exhibit 30(c)) addresses traffic management for summer programs, at pages 15-17. It notes that traffic management measures already in place for summer programs include staggered starting and ending times for different programs, placement of drop off points to ensure that arriving traffic is split between the two Falls Road entrances, stationing of summer personnel at each drop-off/pick-up point to facilitate flow and



employment of a Montgomery County crossing guard at the Democracy Boulevard exit in the morning and afternoon to facilitate cars leaving the campus. The TMP also provides for additional measures, should the current practice fail to control the traffic flow properly.

Technical Staff concluded (Exhibit 34), and the Hearing Examiner agrees,

that the proposed expansion of the Bullis School up to an enrollment of 900 students, and the proposed operation of the summer camp and special activity programs with an enrollment cap of 900 students can be adequately accommodated with implementation of the proposed Transportation Management Program.

### **E. The Environment**

Petitioner's Natural Resource Inventory/Forest Stand Delineation (NRI/FSD), is in the record as Exhibit 26(a). There are 19.3 acres of existing forest, the majority of which is comprised of Tulip Poplar and Oak trees. Tr. 128. The forest also contains 198 specimen trees. Tr. 129. As shown in Petitioner's Preliminary Forest Conservation Plan (S-687-F, Exhibit 22(ii)), and as testified to by Andrew Balderson, Petitioner's expert in landscape architecture, approximately 1.2 acres of forest will be removed in order to make the proposed improvements, leaving 18.1 acres of forest to be retained in the conservation easement. Tr. 130.

Both Plans have been approved, and Technical Staff states that no mitigation is required; however, Petitioner has proposed that afforestation of part of the un-forested stream buffers be included as part of the final forest conservation plan. The overview of Petitioner's Final Forest Conservation Plan can be found in S-687-F, Exhibit 22(jj). In addition, Technical Staff "anticipates that adjustments to the preliminary storm water management concept, to be finalized with the subsequent preliminary plan, will further reduce the amount of forest removal necessary for the proposed improvements."

As to water quality, Technical Staff notes that the Bullis property is located primarily within the Ken Branch sub-watershed of Cabin John Creek watershed and that part of the area fronting Falls Road drains to the Kilgour Branch sub-watershed of Watts Branch. “According to the Countywide Stream Protection Strategy (CSPS), Ken Branch has good stream conditions with fair habitat and is a watershed protection area. Kilgour Branch has fair stream conditions with good habitat and is a watershed restoration area.”

The current imperviousness level for this site is 17.3%, according to Technical Staff. The proposed improvements will bring this level to approximately 19.3%. Stream buffer encroachment is limited to outfalls for the storm water management facilities. A Preliminary Storm Water Management Concept Plan (Exhibit 32(a)) has been reviewed by the Department of Permitting Services (DPS) and by Technical Staff. It will be finalized and approved by DPS before submission of a subsequent preliminary plan for this site. In addition to current facilities, the Plan includes several new bio-retention facilities and a new storm water management pond, all of which are located outside of the stream valley buffers.

Environmental Planning Staff of the M-NCPPC reviewed the subject modifications and recommended approval, with the following two conditions, both of which are included in the Hearing Examiner’s recommendations in Part V of this report:

- Approval of a final forest conservation plan by M-NCPPC Environmental Planning prior to issuance of sediment and erosion control permit. The Plan shall specify forest protection measures and proposed afforestation areas. A Category I Forest Conservation easement or comparable long-term protection measure shall be placed on remaining forest and the stream valley buffers.
- Approval of a finalized storm water management concept by the Montgomery County Department of Permitting Services (DPS) prior to preliminary plan approval for this site.

## **F. Community Concerns**

There has been no community opposition to the proposed modifications, probably because of Petitioner's outreach efforts, which are chronicled in the Technical Staff report (Exhibit 34) and in the testimony of Todd McCreight at Tr. 62-66.

According to Technical Staff, each contiguous neighbor was mailed an invitation to one of two evening meetings scheduled in January of 2004 to present the School plan and hear community comments. The School followed up with reminder phone calls before both meetings. Eleven neighbors attended the first meeting, while twelve attended the second. One letter received from a Nantucket Terrace neighbor after the January 7th meeting stated that Bullis was a "very good neighbor" and characterized Bullis' proposals as "an extremely fine plan." (Attachment 2 to Exhibit 34).

In response to concerns expressed by a few neighbors on Democracy Boulevard, Petitioner agreed to enhance the vegetative screen along their back property lines. Those additional plantings are shown in the revised Landscape Plans, Exhibits 57(a-1) and (a-2) and on the Revised Bullis Master Plan (Exhibit 39). The School also prepared a perspective rendering of the proposed Lower School Building (Exhibit 43), and mounted posts on the site showing the intended height of the building, so that the neighbors could understand what portion, if any, of the building would be visible from their homes. Tr. 62-63. This was all presented to the interested Democracy Boulevard neighbors at an April 12, 2004 follow-up meeting, thereby satisfying their concerns.

On January 28, 2004, Petitioner made a presentation to the Board of the West Montgomery County Citizens Association (WMCCA). Questions following the presentation covered a number of topics, including phasing, faculty/staff growth, traffic impacts,

imperviousness and the appearance of the proposed Lower School. The WMCCA has informed Technical Staff that, after careful review of the plans, they do not intend to oppose the petition.

On March 15th, 2004, Petitioner met with Mr. Randy Elliott, president of the Normandy Farms Neighborhood Association. Tr. 66. According to Technical Staff, Mr. Elliott was most interested in traffic impacts, since his association is not contiguous to the campus. Mr. McCreight testified that Mr. Elliot had no substantive objections to the plan. Tr. 66.

The People's Counsel summed up Petitioner's efforts to accommodate its neighbors by saying, "The school has gone above and beyond what a good neighbor is . . . ." Tr. 153.

### **III. SUMMARY OF THE HEARING**

At the inception of the hearing, the Hearing Examiner raised the possible appearance of a conflict of interest in that his family had affiliations with two schools that are rivals of Bullis. After a full disclosure on the record,<sup>17</sup> no objection to the Hearing Examiner serving in this matter was raised by any party. Therefore, the Hearing Examiner did not recuse himself, and the hearing proceeded. The only witnesses were those called by Petitioner.

#### **A. Petitioner's Case**

Petitioner called seven witnesses at the hearing: Thomas Farquhar, Petitioner's Head of School; Todd McCreight, Business Officer of the Bullis School, Tim Lovett, an architect, Robert

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<sup>17</sup> The Hearing Examiner informed all parties by letter on April 5, 2004, (Exhibit 28) of a possible conflict of interest, in that the Hearing Examiner has affiliations with two rival schools. The Hearing Examiner advised all parties in the April 5 letter and at the hearing that his wife is a teacher at the Norwood School, and both of his children are graduates of the Landon School. The Hearing Examiner also noted that the pending Modification Petitions would not have any effect on him or his wife, but he thought it appropriate to disclose the connection in case any party found it objectionable. No objection to the Hearing Examiner serving in this matter was raised either in response to the letter or at the hearing.

Brown, a civil engineer, Andrew Balderson, a landscape architect, Stephen Peterson, a traffic engineer and Marty Berger, Petitioner's Director of Summer Programs.

1. Thomas Farquhar:

Thomas Farquhar testified that he is the Head of School at Bullis, and as such is in charge of operations. He has been in the position for two years. Tr. 25. Mr. Farquhar reviewed the history of the Bullis School and explained why the school seeks to increase its enrollment. Tr. 26-30. Bullis strongly believes in community outreach, rejecting the "tone or culture of exclusivity" of some private schools. It thus seeks "a broader academic profile" (*i.e.*, not just "top tier students"), and needs "growth and opportunity for enrollment in the future . . . to preserve a sense of access to Bullis." In order to accommodate the planned increase in enrollment, Bullis will have to make significant changes and additions to the structures on campus. Tr. 30. Bullis also seeks approval of its summer camp, and runs an active community theater program that was approved by the Board of Appeals within the past five years. Tr. 32.

2. Todd McCreight:

Todd McCreight is the Business Officer at Bullis. He testified that he is the person primarily responsible for "packaging and processing" the subject petitions and that the school accepts all the conditions recommended by the Planning Board and Technical Staff. Tr. 35-36. The school agrees to add a sidewalk from the northbound bus stop on Falls Road to the Bullis campus, but suggests that its precise design should await preliminary plan of subdivision so that it can be coordinated with redesign of the front entrance. Tr. 36-38. Once a final design is approved, Petitioner will apply for an administrative modification to its special exception to reflect the location of the new sidewalk. Tr. 38-39.

Mr. McCreight further testified that completion of Petitioner's construction program and

the achievement of a 900 student enrollment will likely take at least seven years and “probably not more than twelve years.” Tr. 40. The rate of growth will be determined mainly by two factors, the rate of increase of qualified applicants and the rate of fundraising. Tr. 146-148. The proposed ceiling in summer program enrollment is linked to the proposed increase in general student body enrollment (*i.e.*, 900, or whatever level the Board of Appeals grants in S-687-F). However, until Bullis’ academic enrollment actually reaches the 900 level, Petitioner would like the flexibility to occasionally have more campers than students, albeit fewer than the 900 cap. Tr. 160-163.

In order to accommodate the planned increase in enrollment, Bullis will need to gradually increase its faculty from 98 to 148 (about 50%) and its staff from 55 to 75 (about 36%). Tr. 42-43. Mr. McCreight testified as to the hours of operation, and that perhaps one night in 20 the school will be open till 11:00 p.m. for theatrical performances. There are also occasional evening athletic events, but the level of traffic has not been high enough to warrant active management. Tr. 44-46. When Petitioner does have a large evening crowd, Bullis staff are stationed at campus intersections to keep traffic flowing smoothly. Tr. 47. The number of times the stadium lights can be turned on each year is limited by a “previous Court Opinion.” Tr. 48. The school does not anticipate adding any sports as a result of the expansion. Tr. 49.

Mr. McCreigh explained the on-campus car stacking system shown on Exhibits 40 and 41, and testified that the school would switch to the car stacking system shown in Exhibit 41 once the new lower school is completed. Tr. 53-57. He also noted that Technical Staff had assumed a worst case scenario of an increase in cars directly proportional to the increase in the student body, and “traffic would still not back up onto Falls Road.” Tr. 58. In response to a cross-examination question from the People’s Counsel, Mr. McCreight stated that he could not recall any complaints from neighbors about traffic-related activities in the seven years he has been at the school.

Mr. McCreight further testified that the Petitioner had three meetings with the contiguous neighbors, two in January and one in April. The only concern raised at the January meetings was from some Democracy Boulevard residents who wanted to know “what this new lower school building would look like from their back yards.” Tr. 62. The proposed new Lower School is a one story structure that was expressly designed to be “residential-looking.” Tr. 65.

In response to the neighbors’ apprehension, Petitioner agreed to enhance the vegetative screen along their back property lines. The School also prepared a perspective rendering of the proposed Lower School Building (Exhibit 43), and mounted posts on the site showing the intended height of the building, so that the neighbors could understand what portion, if any, of the building would be visible from their homes. Tr. 62-63. This was all presented to the interested Democracy Boulevard neighbors at an April 12, 2004 follow-up meeting, thereby satisfying their concerns.

In late January, Petitioner made a presentation to the Board of the West Montgomery County Citizens Association (WMCCA). The school provided follow-up information on changes in imperviousness. The WMCCA “seemed happy with the [campus master] plan,” and they were satisfied with the traffic management plan. Tr. 65-66.

Mr. McCreight later met with Mr. Randy Elliott, President of the Normandy Farms Neighborhood Association and walked him through the plan. Mr. McCreight testified that Mr. Elliot had no substantive objections to the plan. Tr. 66.

Mr. McCreight also discussed the Bullis bussing program, which currently has 80 riders and would grow. In addition, he indicated that under the new Transportation Management Program, there would be a new Transportation Coordinator and a new carpooling program. Tr. 67-68.

Mr. McCreight testified that there have been plans created in the past to straighten some of the curves on Falls Road as they pass the Bullis campus, but it was his understanding that nothing is currently planned. In any event, he stated that Bullis will be working with the State Highway Administration during the subdivision process to address the long-range plan for realignment of Falls Road as it passes the Bullis campus. Tr. 68-73.

Finally, Mr. McCreight testified that, to his knowledge, the proposed expansion of Bullis would cause no adverse effects on the surrounding neighborhood. Tr. 74-75.

3. Tim Lovett:

Tim Lovett testified as an expert in architecture. He explained the Bullis Master Plan (Exhibit 39), and noted that the Key to the Bullis Master Plan summarizes the physical improvements planned for the campus. Tr. 81-83. He then discussed the plans for each of these projects, as well as the temporary modular classrooms. Tr. 83-98. As stated by Mr. Lovett, in discussing the new Lower School building, “The elevations . . . are very residential on the scale and also in the material, . . . which is very important for us to bring not only the scale down from the perception of the neighbors, but also because, from a functional standpoint, it works best for the lower school program.” Tr. 86.

In discussing the new Upper School building, Mr. Lovett testified that he would anticipate matching the brick and not introducing new materials. Tr. 93. In the athletic center, they are planning to add on using the same brick, but they will also add some stucco to avoid a monolithic brick building. Tr. 97. The proposed structural changes on the Bullis campus will be compatible both with the existing structures and with the neighborhood. Tr. 83-98.

Mr. Lovett testified that the front entrance sign will be changed in conjunction with changes to the main entrance area, and Petitioner’s counsel stated that Petitioner will request an



administrative modification to its special exceptions to reflect the precise size and nature of the new sign. Tr. 98-100.

Mr. Lovett further testified that the number of parking spaces will ultimately increase from 434 to 535, to accommodate faculty, staff and students. Tr. 101. Mr. Lovett stated that Petitioner had complied with all the applicable development standards and that he had prepared the “Zoning Summary” in Exhibit 52 to so indicate. Tr. 101-102.

After discussing the new lighting intended for the campus, Mr. Lovett completed his testimony by emphasizing why the proposed structures would be in harmony with the neighborhood:

[F]rom an architectural standpoint . . . the forms that we are using to physically describe the architecture . . . that is proposed are very residential. There are pitched roofs. They are one-story, two-story elements. There are some porches that have been added. There is delineation between floors using porcine, by either the brick or cast stone. Also to add to that too is the material choices that we have made to articulate the buildings. The materials are very residential scaled using brick, which is a small modular building material, shingles, wood trim that is painted, divided light windows and other very residentially scaled building materials. Tr. 110.

4. Robert Brown:

Robert Brown testified as an expert in civil engineering. He stated that, based on observations made by Technical Staff, he had revised his Preliminary Storm Water Management Concept Plan for the property, and the revised Plan incorporating the suggestions of Technical Staff was admitted as Exhibit 32(a). Tr. 117-122. Mr. Brown also testified to the adequacy of water and sewer services (Tr. 123-124).

5. Andrew Balderson:

Andrew Balderson testified as an expert in landscape architecture. He stated that there

are 19.3 acres of existing forest on the campus, the majority of which is comprised of Tulip Poplar and Oak trees. Tr. 128. The forest also contains 198 specimen trees. Tr. 129. Mr. Balderson testified that he had prepared a Preliminary Forest Conservation Plan, under which approximately 1.2 acres of forest will be removed in order to make the proposed improvements, leaving 18.1 acres of forest to be retained in the conservation easement. Tr. 130. He also testified as to supplemental plantings planned by Petitioner, even though not required. Tr. 131.

6. Stephen Peterson:

Mr. Peterson testified as an expert in traffic engineering. He stated that he did a traffic study with regard to the proposed Bullis expansion, and that it “was prepared according to the Local Area Transportation Review Guidelines published by the Park and Planning Commission.” Tr. 136-137. He did traffic counts for the morning and evening peak periods at intersections specified by Park and Planning, and at three access points to the subject site. In addition, Mr. Peterson did traffic counts at the dismissal time from the school, to determine if there were any problems generated at any of the locations during the school peak hour, which is not the traffic peak hour. The school provided additional information as to car occupancy for the people who were dropping off children at the school in the morning. He then used that information to project anticipated traffic for an enrollment of 900 students and added that to the road system to see if any locations did not meet the congestion standards for the Potomac policy area. From that analysis, Mr. Peterson determined that “even with the expansion to the 900 students, all of the locations still fell with[in] critical lane volume; it was below the 1,525 critical lane movements that are permitted in the Potomac policy area.” Tr. 137.

Mr. Peterson also testified with regard to Petitioner’s Transportation Management Plan. Tr. 137-138. He commented that the new Transportation Management Plan is an extension of a

program that is already in place at the school, and it has evolved over time as, as enrollment has increased and as the conditions have changed. In Mr. Peterson's words,

One of the beauties of the Bullis School campus is that they can, by virtue of having access to both Falls Road and Democracy Boulevard, they can create a flow-through system which eliminates, essentially eliminates any conflicts between entering and exiting traffic. The traffic enters from one side of the campus and exits through the other. And, under current conditions, they do in fact, in the afternoon, have a police officer that directs traffic, as indicated earlier by Mr. McCreight. And they will expand that to include the morning as well as the need arises and with increasing enrollment. Tr. 138.

In Mr. Peterson's opinion, the proposed changes to the Bullis School will have no adverse effect on the safety of vehicular or pedestrian traffic. Tr. 142.

Mr. Peterson also testified that the transportation network is adequate to accommodate operation of the Bullis summer programs with 900 campers. In fact, he indicated that the impact on traffic of running the Bullis summer programs with 900 enrollees would actually be less than the impact on traffic of running the school during the academic year with 604 students. Tr. 169. He gave three reasons -- the staggered arrival for different summer programs, the later start time for all the programs and the lower level of summer traffic, in general. In Mr. Peterson's opinion, the summer program traffic would not exceed the volume his LATR analysis yielded for the school-year traffic, and the increase in summer enrollment would not create a safety hazard for pedestrians or vehicles. Tr. 169-170.

7. Marty Berger:

Marty Berger testified that he is the Director of Summer Programs at Bullis. He introduced the Summer Camp Brochure (Exhibit 53) "[w]hich carries the totality of our programs." Tr. 165. Mr. Berger further testified that he has never had a situation where there was an off-site traffic impact from the summer camp program (Tr. 165), and that he does not

anticipate any such problem if enrollment increases. Tr. 166. He has never received any complaints from neighbors about the children being too loud or bothersome. Tr. 166. Mr. Berger could not imagine any condition (such as noise, odors, etc.) resulting from the increase in enrollment that would be bothersome to the surrounding neighborhood.

As a rule, average enrollment in the summer programs has been about 450 campers. Tr. 167. Summer hours of operation end at 6:00 p.m. for all activities except the evening lacrosse camp, which takes place only during the week of June 14, 2004. That camp runs from 5:30 to 8:00 p.m. Tr. 168.

### **B. People's Counsel**

Martin Klauber, the People's Counsel, did not present any witnesses at the hearing, but he did participate in support of the Petitions and suggested certain conditions to which Petitioner agreed. Those suggested conditions were aimed at assuring that once Petitioner's plans were finalized in the subdivision process, Petitioner would update its plans before the Board of Appeals through the administrative modification process. Mr. Klauber also highly praised Petitioner's careful development of its plan and its "good neighbor" policies. Tr. 152-153.

The People's Counsel summed up Petitioner's efforts to accommodate its neighbors by saying, "The school has gone above and beyond what a good neighbor is . . . ." Tr. 153.

## **IV. FINDINGS AND CONCLUSIONS**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special

exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards.

Petitions to modify the terms or conditions of a special exception are authorized by §59-G-1.3(c)(4) of the Zoning Ordinance. As mentioned in Part I of this report, because Petitioner's plans include an expansion of the total floor area by more than either of the alternative statutory criteria (7500 square feet or 25%), the scope of this inquiry includes a review of the "underlying special exception[s]," and is not limited by statute to "discussion of those aspects of the special exception use that are directly related to [the modification] proposals."

Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the proposed modifications, taken in combination with Petitioner's transportation management plan, screening and other proposals, will successfully avoid any adverse effects on the community and will meet the general and specific requirements for the proposed use, as long as Petitioner complies with the conditions set forth in Part V, below.

#### **A. Standard for Evaluation**

The standard for evaluation prescribed in Code § 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are "the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations." Code § 59-G-1.21. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are "physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by

unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a private educational institution use. Characteristics of the proposed modifications that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed modification that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff suggested that the inherent adverse effects associated with private educational institutions include “the size, scale, and institutional character of the facilities including parking and traffic.” The Hearing Examiner would expand on that description by finding that the inherent adverse effects of a private educational institution include a significant number of students, faculty and staff, buildings and facilities designed to accommodate the academic and athletic programs associated with school-aged children, impervious surfaces for parking of vehicles, traffic generated by vehicles, noise from activities, lighting, and signage.

### **B. Applying the Standard to the Requested Modifications**

The central thrust of both Modification Petitions is a proposal to increase Petitioner’s enrollment caps. The Hearing Examiner finds that as a matter of statutory interpretation, as well

as common sense, enrollment, *per se*, cannot be considered a non-inherent adverse effect because every school and related educational program must have an enrollment to exist; however, the size of enrollment can create problems of scale which make that particular size of enrollment a non-inherent characteristic.

Factors such as the size and layout of the campus, the proximity of neighboring residences, the existence of buffering landscape and the availability of faculty, staff and facilities to accommodate the enrollment all play a part in determining whether a particular size of enrollment at a particular site creates a non-inherent effect. Thus, even though enrollment is an inherent characteristic of a school, and the Board cannot deny a special exception just because a school has an enrollment, the Board can deny a special exception or a modification request if the proposed enrollment is of such a size as to be out of scale with the available facilities or the neighborhood, thereby rendering it a non-inherent characteristic.

In this case, a very large increase in enrollment (50%) is planned; however, Petitioner has a large, well designed campus, considerable landscaping and plans for the hiring of additional faculty and staff and the construction of adequate facilities to accommodate the increased enrollment. Regardless of whether these activities are considered inherent or non-inherent, they can and should be conditioned as necessary to protect the neighbors against adverse effects. The Board of Appeals has authority to establish conditions for an increase in enrollment under the general special exception law (Code Section 59-G-1.22(a)) and under the specific terms of this particular special exception (Code Section 59-G-2.19(a)(4)a.). The Hearing Examiner believes that a condition requiring that Petitioner not increase enrollment faster than it can accommodate the increased enrollment is appropriate to avoid transforming an inherent characteristic of private educational institutions into a non-inherent one. After carefully reviewing the entire record, the Hearing

Examiner is convinced, as was the Technical Staff, that the requested modifications, if properly conditioned, will have no significant adverse effects, inherent or non-inherent, on the surrounding area.

Technical Staff correctly points out that the summer programs and special activities proposed in Petition S-687-G are not found in all private educational institutions and therefore could be considered non-inherent operational characteristics. They are certainly optional activities, although increasingly common among private educational institutions, as noted by Technical Staff. On the other hand, the Board of Appeals has repeatedly looked to whether the proposed use or modification is “consistent with” the generic characteristics of the use,<sup>18</sup> not whether the proposed use or modification is essential to the special exception or found in all such special exception uses. In that sense, a reasonably sized summer camp and a small number of special activities are “consistent with” a private educational institution use, and therefore might be considered inherent characteristics. Nevertheless, whether one considers these activities inherent or non-inherent, the linchpin for avoiding adverse effects is proportionality. If the summer programs and special activities are scaled so that there are adequate staff and facilities to handle them, then they would not create inherent or non-inherent adverse effects at this site. As with the academic enrollment, the Hearing Examiner has proposed a condition to assure that proportionality.

While the analysis of inherent versus non-inherent characteristics is difficult in this kind of case, both the Technical Staff and the Hearing Examiner ultimately reached the same conclusion – that there are no inherent or non-inherent adverse effects in this case which would warrant denial of the Modification Petitions. Technical Staff put it well:

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<sup>18</sup> Board of Appeals Opinion in S-2510, *Hall and Post*, August 5, 2002, p 8; Board of Appeals Opinion in S-2457, *Harbor School*, April 25, 2002, p 13; and Board of Appeals Opinion in S-2494, *Omnipoint Communications*, May 30, 2002, p 4.



Planning staff finds that the expansive 78-acre campus, ample setbacks, the existing forest areas, the existing mature landscaping, the proposed grading, landscaping and screening, and the fact that the preponderance of activities will be indoors, mitigate the non-inherent characteristics of the proposed modifications, and that the existing and proposed activities are compatible with the adjacent residential areas. Planning staff finds that the physical and operational characteristics of the proposed modification regarding the summer camp and special activity programs are reasonable and that the submitted transportation management plan is efficient and will not have an adverse effect on the surrounding neighborhood.

In sum, the Hearing Examiner finds and concludes that both of the proposed modification petitions should be granted, but with the specific conditions recommended in Part V of this Report.

### **C. General Standards**

The general standards for a special exception are found in Zoning Code Section 59-G-1.21(a). The Technical Staff reports and the Petitioner's exhibits and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

#### **Sec. 59-G-1.21. General conditions:**

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

Conclusion: Private educational institutions are permitted by special exception in the RE-2

Zone involved in the subject case.

(2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed modifications would comply with the standards and requirements for private educational institutions set forth in Code §§59-G-2.19, as detailed in Part IV.D., below.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The property is included under the *Potomac Subregion Master Plan*, approved and adopted in 2002. The Land Use portion of the Master Plan does not specifically address the Bullis School site,<sup>19</sup> but as mentioned by Technical Staff, a private educational institution is permitted by special exception in the RE-2 Zone. Moreover, it is worthy of note that the Council, in adopting the final version of the Master Plan, eliminated language in the draft (p. 34) which would have required special exceptions for new or expanded private educational institutions to be “limited to those that serve the local area.” Instead, the Council substituted the following language:

There are a number of private educational institutions in the planning area and concerns have been raised about parking and traffic problems caused by queuing for drop-off and pick-up. The Council is considering amendments to the special exceptions provisions in the Zoning Ordinance to address these issues.

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<sup>19</sup> The Transportation Section of the Plan (p. 114) does retain a recommendation from the 1980 Master Plan for a realignment of Falls Road at three locations, one of them being at the Bullis School Property. This issue is addressed elsewhere in this Report and is the subject of a recommended condition.

Bullis has ample parking on its campus and has a Transportation Management Plan which will avoid any queuing on public roads for drop-off and pick-up. Thus, the Hearing Examiner finds that nothing in the proposed Modification Petitions is inconsistent with the applicable Master Plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: The proposed modifications would be in harmony with the general character of the neighborhood. As pointed out by the Technical Staff, the population density at full enrollment of 900 students will be 11.5 students per acre, well short of the zoning ordinance maximum of 87 students per acre. Zoning Code §59-G-2.19(a)(4)a.5. The only new building that will be close to neighboring homes is the proposed new Lower School, a one story structure that was expressly designed to be “residential-looking.” Tr. 65. Moreover, a significant amount of landscaping will be added as a buffer between the new Lower School and the homes on Democracy Boulevard. All of the new buildings are designed to be compatible with existing structures and the residential character of the neighborhood (Tr. 110), and the school has not had any apparent adverse effect on the neighborhood since its inception in 1963. There is and will be ample parking on campus, and the school’s Transportation Management Plan will avoid any queuing of traffic on public roads either during the school year or the summer.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general*

*neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that, with the specified conditions, the requested modifications would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site. The Bullis Master Plan (Exhibit 39) depicts significant buffers of forest and open space between the School's facilities and the School's neighbors.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: There is no evidence in the record that Bullis's current operations cause any objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site. Given the size of the Bullis campus, the proposed enrollment increases and additional structures are unlikely to change that circumstance. Photometric studies demonstrate that campus lighting will not spill out onto surrounding properties in excess of permitted limits (.1 footcandles).

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: The only other special exceptions in the area govern the tennis club and the Manor Care Nursing Home to the north and two old horse stables on Democracy Boulevard. For the reasons set forth in the preceding paragraphs, the

modifications proposed in the subject case would not increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed modification would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

(i) *If the special exception use requires approval of a preliminary plan of subdivision the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review[LATR] and the Policy Area Transportation Review[PATR], as required in the applicable Annual Growth Policy.*

(ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: The evidence supports the conclusion that the subject property would continue to be served by adequate public facilities. A preliminary plan of subdivision will be required in this case, and therefore the Board of Appeals is not required to determine the adequacy of public facilities. Nevertheless, there is ample evidence in the record proving the adequacy of public facilities. Transportation facilities

are discussed on pages 24-27 and 36-37 of this Report, and engineering expert, Robert Brown, testified to the adequacy of water and sewer services (Tr. 123-124).

The undisputed expert testimony in this case establishes that the proposed changes to the Bullis School will have no adverse effect on the safety of vehicular or pedestrian traffic. Tr. 142 and 169-170. Technical Staff concurred in this conclusion, as does the Hearing Examiner. Based on the evidence in this record, the Hearing Examiner concludes that the proposed modifications, as conditioned, would not create a significant adverse traffic impact, nor reduce the safety of pedestrian or vehicular traffic.

#### **D. Specific Standards: Educational Institutions, Private**

The specific standards for a private educational institution are found in Code § 59-G-2.19. The Technical Staff reports and the Petitioner's exhibits and testimony provide sufficient evidence that the proposed modification would be consistent with these specific standards, as outlined below.

##### **Sec. 59-G-2.19. Educational institutions, private.**

(a) *Generally. A lot, tract or parcel of land may be allowed to be used for a private educational institution if the board finds that:*

(1) *the private educational institutional use will not constitute a nuisance because of traffic, number of students, noise, type of physical activity, or any other element which is incompatible with the environment and character of the surrounding neighborhood;*

*Conclusion:* For the reasons set forth in the General Standards section above, it is clear that the use, as modified, will not constitute a nuisance because of traffic, number of students, noise, or type of physical activity. As noted by the Technical Staff, the

school has been in operation at this location for many years, without apparent ill effect and certainly without raising any objections in this case from its neighbors. The evidence is that Petitioner has gone out of its way to be a good neighbor, as described on pages 39-40 of this Report. The compatibility of the subject use with the environment is also amply demonstrated in the record, as set forth on pages 37-38 of this Report.

(2) *except for buildings and additions completed, or for which a building permit has been obtained before (date of adoption [April 2, 2002]), the private educational institution must be in a building architecturally compatible with other buildings in the surrounding neighborhood, and, if the private educational institution will be located on a lot, tract, or parcel of land of 2 acres or less, in either an undeveloped area or an area substantially developed with single-family homes, the exterior architecture of the building must be similar to a single-family home design, and at least comparable to any existing homes in the immediate neighborhood;*

*Conclusion:* The evidence in this record supports the conclusion that the proposed structural changes on the Bullis campus will be compatible both with the existing structures and with the neighborhood. Tr. 83-98. As stated by Tim Lovett, Petitioner's architect, in discussing the new Lower School building, "The elevations . . . are very residential on the scale and also in the material, . . . which is very important for us to bring not only the scale down from the perception of the neighbors, but also because, from a functional standpoint, it works best for the lower school program." Tr. 86. The same can accurately be said of the other structures which are to be built or modified in these proposals. Tr. 110. One has only to compare the photos of present buildings on campus depicted on page 10 of this Report with the renderings of proposed new buildings shown on pages 20-22 of this Report to

conclude that Petitioner has designed the new buildings and additions to be compatible with the old.

Moreover, as Technical Staff points out, all proposed new buildings and expansions are below the 50 foot height limit for the RE-2 Zone. The new Upper School building will be three stories in height, but will appear to be only two stories on the sides of the building facing the Library and Founder's Hall due to the grading in that area. The exterior of the indoor swimming pool will conform to the building materials of the existing Athletic Center, and the indoor practice facility, or field house addition, is planned as a pre-fabricated metal building, with a partial veneer of concrete block to match the existing Athletic Center and to present an attractive view from all sides. The reconstructed grandstand and new stadium house will be integrated with a brick veneer on all sides. It is evident that these plans were composed with compatibility in mind.

*(3) the private educational institution will not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the surrounding residential community; and*

*Conclusion:* The use, as modified, will not adversely affect or change the present character or future development of the surrounding neighborhood.

*(4) the private educational institution must conform with the following standards in addition to the general development standards as specified in Section G-1.23:*

*a. Density—The allowable number of pupils per acre permitted to occupy the premises at any one time must be specified by the Board considering the following factors:*

*1. Traffic patterns, including:*



- a) *Impact of increased traffic on residential streets;*
  - b) *Proximity to arterial roads and major highways;*
  - c) *Provision of measures for Transportation Demand Management as defined in Section 42A-21 of the Montgomery County Code;*
  - d) *Adequacy of drop-off and pick-up areas for all programs and events, including on-site stacking space and traffic control to effectively deter queues of waiting vehicles from spilling over onto adjacent streets; and*
2. *Noise or type of physical activity;*
  3. *Character, percentage, and density of existing development and zoning in the community;*
  4. *Topography of the land to be used for the special exception; and*
  5. *Density greater than 87 pupils per acre may be permitted only if the Board finds that (i) the program of instruction, special characteristics of students, or other circumstances justify reduced space and facility requirements; (ii) the additional density will not adversely affect adjacent properties; (iii) additional traffic generated by the additional density will not adversely affect the surrounding streets.*

*Conclusion:* The current pupil density of the school is a very low 7.74 students per acre based on an enrollment cap of 604 students and a campus size of approximately 78 acres. The pupil density proposed in the special exception modification petitions will be 11.5 students per acre, based on an enrollment cap of 900 students. That is still very low and well below the 87 per acre pupil density figure used as a standard in subsection a.5, above.

The traffic situation has been discussed at length on pages 24-27 and 36-37 of this Report, as noted in the discussion of the general standards. The Hearing Examiner concludes that Petitioner's Transportation Management Plan is sufficient to avoid queuing on public streets or other traffic problems for its neighbors even at the 900 student enrollment level, both during the school year

and in the summer. Technical Staff reached the same conclusion. Questions of noise, physical activity and the nature of surrounding development have all been considered in the above discussion of the general standards. Technical Staff also found that the topography on the Bullis campus is “appropriate for school activities and team sports,” and the Hearing Examiner agrees. Based on all these factors, and the on the analysis of General Development Standards discussed below, the Hearing Examiner concludes that Petitioner’s proposed cap of 900 students will not create an excessive student density.

- b. Buffer—All outdoor sports and recreation facilities must be located, landscaped or otherwise buffered so that the activities associated with the facilities will not constitute an intrusion into adjacent residential properties. The facility must be designed and sited to protect adjacent properties from noise, spill light, stray balls and other objectionable impacts by providing appropriate screening measures, such as sufficient setbacks, evergreen landscaping, solid fences and walls.*

*Conclusion:* All Bullis athletic fields are well buffered by landscaping and distance so that they do not constitute an intrusion on adjacent residential properties. The location of all fields will be remain the same, although one field will be extended. Technical Staff opines, and the Hearing Examiner agrees, that this change will have no impact on neighboring residences.

- (b) If a Private Educational Institution operates or allows its facilities by lease or other arrangement to be used for: (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, the Board must find, in addition to the other required findings for the grant of a Private Education Institution special exception, that the activities in combination with other activities of the institution, will not have an adverse effect on the surrounding neighborhood due to traffic, noise, lighting, or parking, or the intensity, frequency, or duration of activities. In*

*evaluating traffic impacts on the community, the Board must take into consideration the total cumulative number of expected car trips generated by the regular academic program and the after school or summer programs, whether or not the traffic exceeds the capacity of the road. A transportation management plan that identifies measures for reducing demand for road capacity must be approved by the Board.*

*The Board may limit the number of participants and frequency of events authorized in this section.*

*Conclusion:* The summer programs and the special activities proposed by Bullis are the subject of Petition S-687-G. Those programs and activities are discussed at length on pages 31-37 of this Report and are classified into four categories – Bullis Summer Institute, Sports Programs, “Bulldog” Day Camp and Academic Calendar Year Activities (Petitioner’s Statement of Operations, S-687-G, Exhibit 3(a)).

Some of the “Academic Calendar Year Activities” have been previously approved by the Board of Appeals, such as the Jack Schore Tennis Training Center program and performances of the Potomac Theatre Company, sanctioned by the Board of Appeals in conjunction with its approval of Bullis’ Blair Family Arts Center.

According to Bullis’ TMP (Exhibit 30(c)), the school has not found it necessary to take any extraordinary traffic management steps to avoid these events causing off-campus traffic problems.

As to the summer programs, Petitioner’s traffic engineer, Stephen Peterson, testified that the transportation network is adequate to accommodate operation of the Bullis summer programs with 900 campers. Tr. 169. In Mr. Peterson’s opinion, the summer program traffic would not exceed the volume his LATR analysis yielded for the school-year traffic. That analysis produced results well within the maximum permissible of 1525 CLV. Tr. 137. Moreover, Mr.

Peterson concluded that the increase in summer enrollment would not create a safety hazard for pedestrians or vehicles. T. 169-170.

In addition, the Bullis TMP (Exhibit 30(c)) addresses traffic management for summer programs. It notes that traffic management measures already in place for summer programs include staggered starting and ending times for different programs, placement of drop off points to ensure that arriving traffic is split between the two Falls Road entrances, stationing of summer personnel at each drop-off/pick-up point to facilitate flow and employment of a Montgomery County crossing guard at the Democracy Boulevard exit in the morning and afternoon to facilitate cars leaving the campus. The TMP also provides for additional measures, should the current practice fail to control the traffic flow properly.

The Technical Staff concluded, and the Hearing Examiner agrees, that the Petitioner has provided sufficient information to determine that these uses, in combination with other school activities, will not have a significant adverse impact on the surrounding neighborhood due to traffic, noise, lighting or parking, or the intensity, frequency, or duration of activities. In evaluating traffic impact, the Technical Staff took into consideration the cumulative number of expected vehicle trips generated by all of the uses on the campus and found that the traffic would not exceed the capacity of nearby roadways. The evidence produced at the hearing, as summarized above, also supports the Technical Staff's conclusions.

(c) *Programs Existing before April 22, 2002.*

(1) *Where previously approved by the Board, a private educational institution may continue the operation of (i) tutoring and college entrance exam preparatory courses, (ii) art education*

*programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, whether such programs include students or non-students of the school, if the number of participants and frequency of events for programs authorized in 59-G-2.19(b) are established in the Board's approval.*

*(2) Where not previously approved by the Board, such programs may continue until April 22, 2004. Before April 22, 2004, the underlying special exception must be modified to operate such programs, whether such programs include students or non-students of the school. The Board may establish a limit on the number of participants and frequency of events for authorized programs.*

**Conclusion:** Petitioner's proposals include both continuation of existing programs and addition of some previously unapproved activities, as outlined in Part II. D. of this Report.

*(d) Site plan.*

*(1) In addition to submitting such other information as may be required, an Petitioner shall submit with his application a site plan of proposed development. Such plan shall show the size and shape of the subject property, the location thereon of all buildings and structures, the area devoted to parking and recreation facilities, all access roads and drives, the topography and existing major vegetation features, the proposed grading, landscaping and screening plans and such other features necessary for the evaluation of the plan.*

*(2) No special exception, building permit or certificate of occupancy shall be granted or issued except in accordance with a site plan of development approved by the board. In reviewing a proposed site plan of development the board may condition its approval thereof on such amendments to the plan as shall be determined necessary by the board to assure a compatible development which will have no adverse effect on the surrounding community, and which will meet all requirements of this chapter. Any departure from a site plan of development as finally approved by the board shall be cause for revocation of the special exception, building permit or certificate of occupancy, in the manner provided by law.*

**Conclusion:** As noted by the Technical Staff, Petitioner has submitted "a very comprehensive set of campus plans," which "are more than sufficient to allow evaluation of the proposed modifications." The revised Bullis Master Plan (Exhibit 39) is

especially helpful in conveying an overall understanding of the Petitioner's proposals.

- (e) *Exemptions. The requirements of Section G-2.19 do not apply to the use of any lot, lots or tract of land for any private educational institution, or parochial school, which is located in a building or on premises owned or leased by any church or religious organization, the government of the United States, the State of Maryland or any agency thereof, Montgomery County or any incorporated village or town within Montgomery County. This exemption does not apply to any private educational institution which received approval by the Board of Appeals to operate a private educational institution special exception in a building or on a lot, lots or tract of land that was not owned or leased by any church or religious organization at the time the Board of Appeal's decision was issued.*

*Conclusion:* This subsection is not applicable.

- (f) *Nonconforming uses. Nothing in this chapter shall prevent any existing private educational institution which obtained a special exception prior to the effective date of this chapter, from continuing its use to the full extent authorized under the resolution granting the respective special exception, subject, however, to division 59-G-4 of this chapter.*

*Conclusion:* This subsection is not applicable.

- (g) *Public Buildings.*

(1) *A special exception is not required for any private educational institution that is located in a building or on premises that have been used for a public school or that are owned or leased by Montgomery County.*

(2) *However, site plan review under Division 59-D-3 is required for:*

- (i) *construction of a private educational institution on vacant land owned or leased by Montgomery County; or*
- (ii) *any cumulative increase that is greater than 15% or 7,500 square feet, whichever is less, in the gross floor area, as it existed on February 1,*

*2000, of a private educational institution located in a building that has been used for a public school or that is owned or leased by Montgomery County. Site plan review is not required for: (i) an increase in floor area of a private educational institution located in a building that has been used for a public school or that is owned or leased by Montgomery County if a request for review under mandatory referral was submitted to the Planning Board on or before February 1, 2000, or (ii) any portable classroom used by a private educational institution that is located on property owned or leased by Montgomery County and that is in place for less than one year.*

**Conclusion:** This subsection is not applicable.

- (h) *Applications filed before May 6, 2002. Any application filed before May 6, 2002 for a private educational institution special exception or modification of a private educational institutional special exception must comply with the requirements of Article 59-G and Article 59-E in effect at the time the special exception was filed.*

**Conclusion:** This subsection is not applicable.

## **E. Additional Applicable Standards**

### **59-G § 1.23. General development standards**

- (a) **Development Standards.** *Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

**Conclusion:** Petitioner's Exhibit 52 and the following chart from the supplemental Technical

Staff Report (Exhibit 59), demonstrate compliance with all development standards:

<b>DEVELOPMENT STANDARD</b>	<b>REQUIRED/ ALLOWED</b>	<b>PROVIDED</b>	<b>COMPLIANCE</b>
Maximum Building Height	50 feet	Maximum 39 feet	Yes
Minimum Lot Area	2 acres	78.11 acres	Yes

Maximum Building Coverage	25%	$323,544 \div 3,402,471 = 9.5\%$	Yes
Minimum Lot Width at Street	25 feet	1,100	Yes
Minimum Setback from Street	50 feet	50.33 feet	Yes
Minimum Side Setback	35 feet	102.85 feet	Yes
Minimum Rear Setback	35 feet	40.8 feet	Yes
Maximum Student Density per Acre	87 per acre	11.5 per acre	Yes

- (b) ***Parking requirements.*** *Special exceptions are subject to all relevant requirements of Article 59-E.*

Conclusion: Zoning Code §59-E-3.7 requires that private educational institutions provide “[o]ne parking space for each employee, including teachers and administrators, plus sufficient off-street parking space for the safe and convenient loading and unloading of students, plus additional spaces for all student parking.” Upon completion of the proposed Bullis Master Plan improvements, Bullis anticipates a faculty of 148 and a staff of 75, for a total of 223 employees. Student drivers at complete enrollment are estimated by Technical Staff to total approximately 150, thereby requiring 373 spaces to accommodate both employee and student parking. The proposed 535 parking spaces would provide a residual of 162 spaces, which Technical Staff determined would be sufficient for the safe and convenient loading and unloading of students. The proposed parking total of 535 spaces is therefore compliant with Zoning Code §59-E-3.7.

- (c) ***Minimum frontage.*** *In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:*
- (1) *Rifle, pistol and skeet-shooting range, outdoor.*



- (2) *Sand, gravel or clay pits, rock or stone quarries.*
- (3) *Sawmill.*
- (4) *Cemetery, animal.*
- (5) *Public utility buildings and public utility structures, including radio and T.V. broadcasting stations and telecommunication facilities.*
- (6) *Riding stables.*
- (7) *Heliport and helistop.*

Conclusion: The minimum lot width at the street line is 25 feet in the RE-2 Zone.

The subject lot is 1,100 feet in width at the street.

- (d) ***Forest conservation.*** *If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

Conclusion: As shown in Petitioner's Preliminary Forest Conservation Plan (S-687-F, Exhibit 22(ii)), and as testified to by Andrew Balderson, Petitioner's expert in landscape architecture, approximately 1.2 acres of the 19.3 acres of forest on the Bullis campus will be removed in order to make the proposed improvements, leaving 18.1 acres of forest to be retained in the conservation easement. Tr. 130. The Preliminary Forest Conservation Plan has been approved.

- (e) ***Water quality plan.*** *If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.*

Conclusion: A Preliminary Storm Water Management Concept Plan (Exhibit 32(a)) has been reviewed by the Department of Permitting Services (DPS) and by Technical Staff.

It will be finalized and approved by DPS before submission of a subsequent preliminary plan for this site. In addition to current facilities, the Plan includes several new bio-retention facilities and a new storm water management pond, all of which are located outside of the stream valley buffers. The Hearing Examiner concludes that the special exception sought in this case would be consistent with the approved preliminary water quality plan.

- (f) ***Signs.*** *The display of a sign must comply with Article 59-F.*

Conclusion: Petitioner plans to replace its entrance sign, but its precise contours will have to be determined during the subdivision process because its dimensions will depend on the campus entrance configuration approved by the Planning Board at Subdivision. The sign will either comply with Article 59-F or be the subject of a waiver request before the Sign Review Board.

- (g) ***Building compatibility in residential zones.*** *Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Conclusion: The compatibility of the proposed structures with their surroundings is discussed above in connection with the requirements of Zoning Code Sections 59-G-1.21(a)(4) and 59-G-2.19(a)(2). The Hearing Examiner concludes that the structures planned in this case will be compatible based on the nature of the building materials, the low elevations of the buildings, the thorough landscape buffer and the distance from all residences.

- (h) ***Lighting in residential zones.*** *All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light*

*intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:*

- (1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*
- (2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*

Conclusion: Petitioner's photometric study of both the current lighting and the planned new lighting (Exhibits 55(b-1) and (b-2)) demonstrate that Petitioner's lighting will be in compliance with the statute. Technical Staff reviewed these findings in a supplemental report (Exhibit 58) and also found that "[t]he perimeter nighttime lighting survey indicates no readings approaching the threshold level of 0.1 foot candles." Technical Staff therefore determined "that the proposed light levels will have no adverse effect on the surrounding neighborhood." The Hearing Examiner concurs in concluding that neither the current Bullis lighting, nor the planned additional lighting will adversely affect the neighborhood.

Based on the testimony and evidence of record, I conclude that, with the recommended conditions, the changes proposed by Petitioner meet the specific and general requirements for the proposed use, and that the Modification Petitions should be granted, with the conditions recommended in the final section of this report.

## **V. RECOMMENDATIONS**

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petitions numbered S-687-F and S-687-G, which seek to modify existing special exceptions(CBA-1344, S-687 and S-687-A through E) for a private

educational institution operated by the Bullis School, Inc. on property located at 10601 Falls Road, Potomac, Maryland, be ***granted*** with the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
2. All terms and conditions of the approved special exceptions shall remain in full force and effect, except as modified by the Board as a result of these Modification Petitions.
3. The Petitioner must obtain approval of a preliminary plan of subdivision from the Montgomery County Planning Board.
4. The student enrollment under Special Exception Modification Petition S-687-F is limited to 900, and at no time shall Petitioner admit a greater number of students than it is able to appropriately manage with the facilities, faculty and staff available at the time.
5. The student enrollment of the summer programs under Special Exception Modification Petition S-687-G is limited to 900, and at no time shall Petitioner admit a greater number of students to its summer programs than it is able to appropriately manage with the facilities, faculty and staff available at the time.
6. Vehicles arriving at the school are not permitted to be stacked (*i.e.*, queued) on off-site streets during morning drop-off and afternoon pick-up periods.
7. The Petitioner shall implement the comprehensive traffic management program described in the submitted Transportation Management Plan (Exhibit 30(c)).
8. The Petitioner shall address the final alignment of Falls Road as part of a preliminary plan of subdivision for the proposed expansion of enrollment to 900 students, and once the final alignment is approved, Petitioner will apply for an administrative modification to its special exception to show the alignment of Falls Road on its Master Plan for the

Bullis campus.

9. The Petitioner shall agree, as part of a preliminary plan of subdivision for the proposed expansion of enrollment to 900 students, to add a sidewalk from the northbound bus stop on Falls Road onto the Bullis campus. Once the sidewalk is approved in the subdivision process, Petitioner will apply for an administrative modification to its special exception to show the precise location of the sidewalk on its Master Plan for the Bullis campus.
10. After completion of review of its preliminary plan of subdivision and, if required, review by the Sign Review Board, Petitioner will apply for an administrative modification to its special exception to show the precise location and dimensions of its new entrance sign on its Master Plan for the Bullis campus.
11. Petitioner shall obtain approval of a final forest conservation plan by M-NCPPC Environmental Planning Staff prior to issuance of sediment and erosion control permit. The Plan shall specify forest protection measures and proposed afforestation areas. A Category I Forest Conservation easement or comparable long-term protection measure shall be placed on remaining forest and the stream valley buffers.
12. Petitioner shall obtain approval of a finalized storm water management concept plan by the Montgomery County Department of Permitting Services (DPS) prior to preliminary plan approval for this site.

Dated: June 14, 2004

Respectfully submitted,

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Martin L. Grossman  
Hearing Examiner

